



March 13, 2007

ENGROSSED SENATE BILL No. 419

DIGEST OF SB 419 (Updated March 7, 2007 2:53 pm - DI 101)

Citations Affected: IC 26-1; IC 32-31.

Synopsis: Uniform Commercial Code. Modifies the Indiana Uniform Commercial Code - General Provisions to conform with the Uniform Commercial Code - General Provisions. Modifies the Indiana Uniform Commercial Code - Documents of Title to conform with the Uniform Commercial Code - Documents of Title. Makes conforming amendments to other articles of the Indiana Uniform Commercial Code.

Effective: July 1, 2007.

Simpson, Paul

(HOUSE SPONSORS — BARDON, FOLEY)

January 11, 2007, read first time and referred to Committee on Insurance and Financial Institutions.

February 6, 2007, amended, reported favorably — Do Pass.

February 12, 2007, read second time, amended, ordered engrossed.

February 13, 2007, engrossed. Read third time, passed. Yeas 45, nays 1.

HOUSE ACTION

February 27, 2007, read first time and referred to Committee on Financial Institutions.

March 12, 2007, reported — Do Pass.

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ES 419—LS 7319/DI 103+



March 13, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 26-1-1-101 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 101. (1) IC 26-1 shall
3 be known and may be cited as Uniform Commercial Code.

4 (2) **IC 26-1 applies to a transaction to the extent that it is**
5 **governed by another article of the Uniform Commercial Code.**

6 SECTION 2. IC 26-1-1-108.2 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2007]: **Sec. 108.2. This article modifies,**
9 **limits, and supersedes the Electronic Signatures in Global and**
10 **National Commerce Act (15 U.S.C. 7001 et seq.). However, this**
11 **article does not:**

12 (a) **modify, limit, or supersede 15 U.S.C. 7001(c); or**

13 (b) **authorize the electronic delivery of a notice described in 15**
14 **U.S.C. 7003(b).**

15 SECTION 3. IC 26-1-1-201 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. Subject to
17 additional definitions contained in IC 26-1-2 through IC 26-1-10 which

ES 419—LS 7319/DI 103+



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are applicable to specific provisions, and unless the context otherwise requires, in IC 26-1:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in IC 26-1-1-205. ~~and IC 26-1-2-208.~~ Whether an agreement has legal consequences is determined by the provisions of IC 26-1, if applicable; otherwise by the law of contracts (IC 26-1-1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person:

(A) **in control of a negotiable electronic document of title;**
or

(B) in possession of ~~an~~ **a negotiable** instrument, **a negotiable tangible** document of title, or **a** certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document **of title** evidencing the receipt of goods for shipment issued by a person engaged in the business of **directly or indirectly** transporting or forwarding goods. ~~and The term does not include a warehouse receipt. The~~ **term** includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the

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wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may require goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from that seller under IC 26-1-2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous". A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous. Whether a term or clause is conspicuous or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" means the following:

(A) **With respect to an electronic document of title, voluntary transfer of control.**

(B) With respect to instruments, **tangible** documents of title, chattel paper, or certificated securities, ~~means~~ voluntary transfer of possession.

(15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods and also any other document, which means a record that:~~

(A) in the regular course of business or financing, is treated as adequately evidencing that the person in possession **or control** of ~~it~~ **the record** is entitled to receive, **control**, hold, and dispose of the ~~document record~~ and the goods it covers; ~~To be a document of title, a document must purport and~~

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(B) **purports** to be issued by or addressed to a bailee and ~~purport~~ **purports** to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of IC 26-1 to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" ~~with respect to~~ **means:**

(A) the person in possession of a negotiable instrument ~~means the person in possession if the instrument that is payable either to bearer or in the case of an instrument;~~ **payable** to an identified person if the identified person is in possession ~~of the instrument; "Holder" with respect to~~

(B) the person in possession of a negotiable tangible document of title ~~means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession; or~~

(C) the person in control of a negotiable electronic document of title.

(21) To "honor" is to pay or to accept and pay or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay ~~his~~ **the person's** debts in the ordinary course of business or cannot pay

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1 ~~his~~ **the person's** debts as they become due or is insolvent within
2 the meaning of the federal bankruptcy law.

3 (24) "Money" means a medium of exchange authorized or
4 adopted by a domestic or foreign government and includes a
5 monetary unit of account established by an intergovernmental
6 organization or by agreement between two (2) or more nations.

7 (25) A person has "notice" of a fact when:

8 (a) ~~he~~ **the person** has actual knowledge of it;

9 (b) ~~he~~ **the person** has received a notice or notification of it; or

10 (c) from all the facts and circumstances known to ~~him~~ **the**
11 **person** at the time in question, ~~he~~ **the person** has reason to
12 know that it exists.

13 A person "knows" or has "knowledge" of a fact when ~~he~~ **the**
14 **person** has actual knowledge of it. "Discover" or "learn" or a
15 word or phrase of similar import refers to knowledge rather than
16 to reason to know. The time and circumstances under which a
17 notice or notification may cease to be effective are not determined
18 by IC 26-1.

19 (26) A person "notifies" or "gives" a notice or notification to
20 another by taking such steps as may be reasonably required to
21 inform the other in ordinary course whether or not such other
22 actually comes to know of it. A person "receives" a notice or
23 notification when:

24 (a) it comes to ~~his~~ **the person's** attention; or

25 (b) it is duly delivered at the place of business through which
26 the contract was made or at any other place held out by ~~him~~
27 **the person** as the place for receipt of such communications.

28 (27) Notice, knowledge, or a notice of notification received by an
29 organization is effective for a particular transaction from the time
30 when it is brought to the attention of the individual conducting
31 that transaction and, in any event, from the time when it would
32 have been brought to ~~his~~ **the person's** attention if the organization
33 had exercised due diligence. An organization exercises due
34 diligence if it maintains reasonable routines for communicating
35 significant information to the person conducting the transaction
36 and there is reasonable compliance with the routines. Due
37 diligence does not require an individual acting for the
38 organization to communicate information unless such
39 communication is part of ~~his~~ **the person's** regular duties or unless
40 ~~he~~ **the person** has reason to know of the transaction and that the
41 transaction would be materially affected by the information.

42 (28) "Organization" includes a corporation, government or

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governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(33a) "Registered mail" includes certified mail.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to IC 26-1-9.1. The special property interest of a buyer of goods on identification of such goods to a contract for sale under IC 26-1-2-401 is not a security interest, but a buyer may also acquire a security interest by complying with IC 26-1-9.1. Except as otherwise provided in IC 26-1-2-505, the right of a seller or lessor of goods under IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with IC 26-1-9.1. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (IC 26-1-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction

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creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

(x) Additional consideration is not nominal if:

(i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(ii) when the option to become the owner of the goods is

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granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (IC 26-1-3.1-303, IC 26-1-4-208, and IC 26-1-4-209) a person gives value for rights if ~~he~~ **the person** acquires them:

(a) in return for a binding commitment to extend credit or for

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the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a preexisting claim;

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a ~~receipt~~ **document of title** issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

SECTION 4. IC 26-1-1-205 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 205. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A course of performance is a sequence of conduct between the parties to a particular transaction that exists if the:

(a) agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

~~(2)~~ (3) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

~~(3)~~ (4) A course of dealing **or course of performance** between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

~~(4)~~ (5) **Except as provided in subsection (8),** the express terms of an agreement and an applicable course of dealing, **course of performance**, or usage of trade shall be construed wherever reasonable as consistent with each other. ~~but when~~ **If** such a construction is

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unreasonable:

(a) express terms ~~control both~~ **prevail over** course of dealing and course of performance;

(b) **course of performance prevails over course of dealing** and usage of trade; and

(c) course of dealing ~~controls~~ **prevails over** usage of trade.

~~(5)~~ (6) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

~~(6)~~ (7) Evidence of a relevant usage of trade offered by one party is not admissible unless and until ~~he~~ **the party** has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

(8) **Subject to IC 26-1-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.**

SECTION 5. IC 26-1-1-301 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 301. (1) **Except as otherwise provided in this section, if a transaction bears a reasonable relation to Indiana and also to another state or nation, the parties may agree that the law either of Indiana or of the other state or nation shall govern their rights and duties.**

(2) **In the absence of an agreement under subsection (1), and except as provided in subsection (3), IC 26-1 applies to transactions bearing an appropriate relation to Indiana.**

(3) **If any of the following provisions specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law so specified:**

(a) IC 26-1-2-402.

(b) IC 26-1-2.1-105 and IC 26-1-2.1-106.

(c) IC 26-1-4-102.

(d) IC 26-1-4.1-507.

(e) IC 26-1-5.1-116.

(f) IC 26-1-6.1-103.

(g) IC 26-1-8.1-110.

(h) **IC 26-1-9.1-301 through IC 26-1-9.1-307.**

SECTION 6. IC 26-1-1-302 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 302. (1) **An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate the creditor's right to performance of an**

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1 obligation by agreement with either the person obligated or
2 another creditor of the person obligated.

3 **(2) Subordination does not create a security interest as against**
4 **either the common debtor or a subordinated creditor.**

5 SECTION 7. IC 26-1-2-103 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) In IC 26-1-2,
7 unless the context otherwise requires:

8 (a) "Buyer" means a person who buys or contracts to buy goods.

9 (b) "Good faith" in the case of a merchant means honesty in fact
10 and observance of reasonable commercial standards of fair
11 dealing in the trade.

12 (c) "Receipt" of goods means taking physical possession of them.

13 (d) "Seller" means a person who sells or contracts to sell goods.

14 (2) Other definitions applying to IC 26-1-2, or to specified parts
15 thereof, and the sections in which they appear are:

16 "Acceptance". IC 26-1-2-606.

17 "Banker's credit". IC 26-1-2-325.

18 "Between merchants". IC 26-1-2-104.

19 "Cancellation". IC 26-1-2-106(4).

20 "Commercial unit". IC 26-1-2-105.

21 "Confirmed credit". IC 26-1-2-325.

22 "Conforming to contract". IC 26-1-2-106.

23 "Contract for sale". IC 26-1-2-106.

24 "Cover". IC 26-1-2-712.

25 "Entrusting". IC 26-1-2-403.

26 "Financing agency". IC 26-1-2-104.

27 "Future goods". IC 26-1-2-105.

28 "Goods". IC 26-1-2-105.

29 "Identification". IC 26-1-2-501.

30 "Installment contract". IC 26-1-2-612.

31 "Letter of credit". IC 26-1-2-325.

32 "Lot". IC 26-1-2-105.

33 "Merchant". IC 26-1-2-104.

34 "Overseas". IC 26-1-2-323.

35 "Person in the position of seller". IC 26-1-2-707.

36 "Present sale". IC 26-1-2-106.

37 "Sale". IC 26-1-2-106.

38 "Sale on approval". IC 26-1-2-326.

39 "Sale or return". IC 26-1-2-326.

40 "Termination". IC 26-1-2-106.

41 **(3) "Control" as provided in IC 26-1-7-106 and the following**
42 **definitions apply to IC 26-1-2:**

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1 "Check". IC 26-1-3.1-104.

2 "Consignee". IC 26-1-7-102.

3 "Consignor". IC 26-1-7-102.

4 "Consumer goods". IC 26-1-9.1-102.

5 "Dishonor". IC 26-1-3.1-502.

6 "Draft". IC 26-1-3.1-104.

7 (4) In addition, IC 26-1-1 contains general definitions and principles
8 of construction and interpretation applicable throughout IC 26-1-2.

9 SECTION 8. IC 26-1-2-104 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (1) "Merchant"
11 means a person who deals in goods of the kind or otherwise by his
12 occupation holds himself out as having knowledge or skill peculiar to
13 the practices or goods involved in the transaction or to whom such
14 knowledge or skill may be attributed by his employment of an agent or
15 broker or other intermediary who by his occupation holds himself out
16 as having such knowledge or skill.

17 (2) "Financing agency" means a bank, finance company, or other
18 person who in the ordinary course of business makes advances against
19 goods or documents of title or who by arrangement with either the
20 seller or the buyer intervenes in ordinary course to make or collect
21 payment due or claimed under the contract for sale, as by purchasing
22 or paying the seller's draft or making advances against it or by merely
23 taking it for collection whether or not documents of title accompany **or**
24 **are associated with** the draft. "Financing agency" includes also a bank
25 or other person who similarly intervenes between persons who are in
26 the position of seller and buyer in respect to the goods (IC 26-1-2-707).

27 (3) "Between merchants" means in any transaction with respect to
28 which both parties are chargeable with the knowledge or skill of
29 merchants.

30 SECTION 9. IC 26-1-2-202 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. Terms with
32 respect to which the confirmatory memoranda of the parties agree or
33 which are otherwise set forth in a writing intended by the parties as a
34 final expression of their agreement with respect to such terms as are
35 included therein may not be contradicted by evidence of any prior
36 agreement or of a contemporaneous oral agreement but may be
37 explained or supplemented:

38 (a) by course of dealing or usage of trade (IC 26-1-1-205) or by
39 course of performance (~~IC 26-1-2-208~~); **(IC 26-1-1-205)**; and

40 (b) by evidence of consistent additional terms, unless the court
41 finds the writing to have been intended also as a complete and
42 exclusive statement of the terms of the agreement.

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SECTION 10. IC 26-1-2-310 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods, even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods, he may ship them under reservation and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due, unless such inspection is inconsistent with the terms of the contract (IC 26-1-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subdivision (b), then payment is due, **regardless of where the goods are to be received:**

(i) at the time and place at which the buyer is to receive **delivery of the tangible** documents; ~~regardless of where the goods are to be received or~~

(ii) **at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence;** and

(d) where the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment, but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

SECTION 11. IC 26-1-2-323 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 323. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller, unless otherwise agreed, must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a **tangible** bill of lading has been issued in a set of parts, unless otherwise agreed, if the documents are not to be sent from abroad, the buyer may demand tender of the full set. Otherwise, only one (1) part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of IC 26-1-2-508(1) on cure of improper delivery; and

(b) even though the full set is demanded, if the documents are sent from abroad, the person tendering an incomplete set may nevertheless require payments upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such

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shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

SECTION 12. IC 26-1-2-401 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 401. Each provision of IC 26-1-2 with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods, except where the provision refers to such title. Insofar as situations are not covered by the other provisions of IC 26-1-2 and matters concerning title become material, the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (IC 26-1-2-501), and unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by IC 26-1. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of IC 26-1-9.1 on secured transactions, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place, and in particular despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed, where delivery is to be made without moving the goods:

(a) if the seller is to deliver a **tangible** document of title, title passes at the time when and the place where he delivers such documents **and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document;** or

(b) if the goods are at the time of contracting already identified

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1 and no documents **of title** are to be delivered, title passes at
 2 the time and place of contracting.

3 (4) A rejection or other refusal by the buyer to receive or retain
 4 the goods, whether or not justified, or a justified revocation of
 5 acceptance revests title to the goods in the seller. Such revesting
 6 occurs by operation of law and is not a "sale".

7 SECTION 13. IC 26-1-2-503 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 503. (1) Tender of
 9 delivery requires that the seller put and hold conforming goods at the
 10 buyer's disposition and give the buyer any notification reasonably
 11 necessary to enable him to take delivery. The manner, time and place
 12 for tender are determined by the agreement and IC 26-1-2, and in
 13 particular:

14 (a) tender must be at a reasonable hour, and if it is of goods they
 15 must be kept available for the period reasonably necessary to
 16 enable the buyer to take possession; but

17 (b) unless otherwise agreed, the buyer must furnish facilities
 18 reasonably suited to the receipt of the goods.

19 (2) Where the case is within IC 26-1-2-504 respecting shipment,
 20 tender requires that the seller comply with its provisions.

21 (3) Where the seller is required to deliver at a particular destination,
 22 tender requires that he comply with subsection (1) and also in any
 23 appropriate case tender documents as described in subsections (4) and
 24 (5).

25 (4) Where goods are in the possession of a bailee and are to be
 26 delivered without being moved:

27 (a) tender requires that the seller either tender a negotiable
 28 document of title covering such goods or procure
 29 acknowledgement by the bailee of the buyer's right to possession
 30 of the goods; but

31 (b) tender to the buyer of a nonnegotiable document of title or of
 32 a ~~written direction to record directing~~ the bailee to deliver is
 33 sufficient tender unless the buyer seasonably objects, and **except**
 34 **as otherwise provided in IC 26-1-9.1**, receipt by the bailee of
 35 notification of the buyer's rights fixes those rights as against the
 36 bailee and all third persons; but risk of loss of the goods and of
 37 any failure by the bailee to honor the nonnegotiable document of
 38 title or to obey the direction remains on the seller until the buyer
 39 has had a reasonable time to present the document or direction,
 40 and a refusal by the bailee to honor the document or to obey the
 41 direction defeats the tender.

42 (5) Where the contract requires the seller to deliver documents:

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(a) he must tender all such documents in correct form, except as provided in IC 26-1-2-323(2) with respect to bills of lading in a set; and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

SECTION 14. IC 26-1-2-505 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 505. (1) Where the seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (IC 26-1-2-507(2)), a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession **or control** of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within IC 26-1-2-504, but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document **of title**.

SECTION 15. IC 26-1-2-506 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular. ~~on its face.~~

SECTION 16. IC 26-1-2-509 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

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(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (IC 26-1-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of **possession or control of** a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of **possession or control of** a nonnegotiable document of title or other ~~written~~ direction to deliver **in a record**, as provided in IC 26-1-2-503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant. Otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of IC 26-1-2-327 on sale on approval and IC 26-1-2-510 on effect of breach on risk of loss.

SECTION 17. IC 26-1-2-605 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 605. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ **in** the documents.

SECTION 18. IC 26-1-2-705 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 705. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (IC 26-1-2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to

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1 withhold or reclaim the goods.

2 (2) As against such buyer the seller may stop delivery until:

3 (a) receipt of the goods by the buyer; or

4 (b) acknowledgment to the buyer by any bailee of the goods
5 except a carrier that the bailee holds the goods for the buyer; or

6 (c) such acknowledgment to the buyer by a carrier by reshipment
7 or as ~~warehouseman~~ **a warehouse**; or

8 (d) negotiation to the buyer of any negotiable document of title
9 covering the goods.

10 (3) (a) To stop delivery, the seller must so notify as to enable the
11 bailee by reasonable diligence to prevent delivery of the goods.

12 (b) After such notification, the bailee must hold and deliver the
13 goods according to the directions of the seller, but the seller is liable to
14 the bailee for any ensuing charges or damages.

15 (c) If a negotiable document of title has been issued for goods, the
16 bailee is not obliged to obey a notification to stop until surrender of
17 **possession or control** of the document.

18 (d) A carrier who has issued a nonnegotiable bill of lading is not
19 obliged to obey a notification to stop received from a person other than
20 the consignor.

21 SECTION 19. IC 26-1-2.1-103 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) Unless the
23 context otherwise requires, in IC 26-1-2.1:

24 (a) "Buyer in ordinary course of business" means a person who in
25 good faith and without knowledge that the sale to the person is in
26 violation of the ownership rights or security interest or leasehold
27 interest of a third party in the goods, buys in ordinary course from
28 a person in the business of selling goods of that kind but does not
29 include a pawnbroker. "Buying" may be for cash or by exchange
30 of other property or on secured or unsecured credit and includes
31 ~~receiving~~ **acquiring** goods or documents of title under a
32 pre-existing contract for sale but does not include a transfer in
33 bulk or as security for or in total or partial satisfaction of a money
34 debt.

35 (b) "Cancellation" occurs when either party puts an end to the
36 lease contract for default by the other party.

37 (c) "Commercial unit" means such a unit of goods as by
38 commercial usage is a single whole for purposes of lease and
39 division of which materially impairs its character or value on the
40 market or in use. A commercial unit may be a single article, as a
41 machine, or a set of articles, as a suite of furniture or a line of
42 machinery, or a quantity, as a gross or carload, or any other unit

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1 treated in use or in the relevant market as a single whole.

2 (d) "Conforming" goods or performance under a lease contract
3 means goods or performance that are in accordance with the
4 obligations under the lease contract.

5 (e) "Consumer lease" means a lease that a lessor regularly
6 engaged in the business of leasing or selling makes to a lessee
7 who is an individual and who takes under the lease primarily for
8 a personal, family, or household purpose if the total payments to
9 be made under the lease contract, excluding payments for options
10 to renew or buy, do not exceed twenty-five thousand dollars
11 (\$25,000).

12 (f) "Fault" means wrongful act, omission, breach, or default.

13 (g) "Finance lease" means a lease with respect to which:

- 14 (i) the lessor does not select, manufacture, or supply the goods;
- 15 (ii) the lessor acquires the goods or the right to possession and
16 use of the goods in connection with the lease; and
- 17 (iii) one (1) of the following occurs:

18 (A) the lessee receives a copy of the contract by which the
19 lessor acquired the goods or the right to possession and use
20 of the goods before signing the lease contract;

21 (B) the lessee's approval of the contract by which the lessor
22 acquired the goods or the right to possession and use of the
23 goods is a condition to effectiveness of the lease contract;

24 (C) the lessee, before signing the lease contract, receives an
25 accurate and complete statement designating the promises
26 and warranties, and any disclaimers of warranties,
27 limitations, or modifications of remedies, or liquidated
28 damages, including those of a third party, such as the
29 manufacturer of the goods, provided to the lessor by the
30 person supplying the goods in connection with or as part of
31 the contract by which the lessor acquired the goods or the
32 right to possession and use of the goods; or

33 (D) if the lease is not a consumer lease, the lessor, before the
34 lessee signs the lease contract, informs the lessee in writing:

- 35 (a) of the identity of the person supplying the goods to the
36 lessor, unless the lessee has selected that person and
37 directed the lessor to acquire the goods or the right to
38 possession and use of the goods from that person; (b) that
39 the lessee is entitled under IC 26-1-2.1 to the promises and
40 warranties, including those of any third party, provided to
41 the lessor by the person supplying the goods in connection
42 with or as part of the contract by which the lessor acquired

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the goods or the right to possession and use of the goods;
and (c) that the lessee may communicate with the person
supplying the goods to the lessor and receive an accurate
and complete statement of those promises and warranties,
including any disclaimers and limitations of them or of
remedies.

(h) "Goods" means all things that are movable at the time of
identification to the lease contract, or are fixtures
(IC 26-1-2.1-309), but the term does not include money,
documents, instruments, accounts, chattel paper, general
intangibles, or minerals or the like, including oil and gas, before
extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that
authorizes or requires the delivery of goods in separate lots to be
separately accepted, even though the lease contract contains a
clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of
goods for a term in return for consideration, but a sale, including
a sale on approval or a sale or return, or retention or creation of a
security interest is not a lease. Unless the context clearly indicates
otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the
lease, of the lessor and the lessee in fact as found in their
language or by implication from other circumstances including
course of dealing or usage of trade or course of performance as
provided in IC 26-1-2.1. Unless the context clearly indicates
otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results
from the lease agreement as affected by IC 26-1-2.1 and any other
applicable rules of law. Unless the context clearly indicates
otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the
lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession
and use of goods under a lease. Unless the context clearly
indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who
in good faith and without knowledge that the lease to the person
is in violation of the ownership rights or security interest or
leasehold interest of a third party in the goods leases in ordinary
course from a person in the business of selling or leasing goods of
that kind but does not include a pawnbroker. "Leasing" may be for

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cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ **acquiring** goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to IC 26-1-2.1 and the sections in which they appear are:

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"Accessions". IC 26-1-2.1-310(1).
 "Construction mortgage". IC 26-1-2.1-309(1)(d).
 "Encumbrance". IC 26-1-2.1-309(1)(e).
 "Fixtures". IC 26-1-2.1-309(1)(a).
 "Fixture filing". IC 26-1-2.1-309(1)(b).
 "Purchase money lease". IC 26-1-2.1-309(1)(c).

(3) The following definitions in other chapters apply to IC 26-1-2.1:

"Account". IC 26-1-9.1-102(a)(2).
 "Between merchants". IC 26-1-2-104(3).
 "Buyer". IC 26-1-2-103(1)(a).
 "Chattel paper". IC 26-1-9.1-102(a)(11).
 "Consumer goods". IC 26-1-9.1-102(a)(23).
 "Document". IC 26-1-9.1-102(a)(30).
 "Entrusting". IC 26-1-2-403(3).
 "General intangibles". IC 26-1-9.1-102(a)(42).
 "Good faith". IC 26-1-2-103(1)(b).
 "Instrument". IC 26-1-9.1-102(a)(47).
 "Merchant". IC 26-1-2-104(1).
 "Mortgage". IC 26-1-9.1-102(a)(55).
 "Pursuant to commitment". IC 26-1-9.1-102(a)(68).
 "Receipt". IC 26-1-2-103(1)(c).
 "Sale". IC 26-1-2-106(1).
 "Sale on approval". IC 26-1-2-326.
 "Sale or return". IC 26-1-2-326.
 "Seller". IC 26-1-2-103(1)(d).

(4) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-2.1.

SECTION 20. IC 26-1-2.1-514 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 514. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

- (a) if, stated seasonably, the lessor or the supplier could have cured it (IC 26-1-2.1-513); or
- (b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

SECTION 21. IC 26-1-2.1-526 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 526. (1) A lessor may

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1 stop delivery of goods in the possession of a carrier or other bailee if
 2 the lessor discovers the lessee to be insolvent and may stop delivery of
 3 carload, truckload, planeload, or larger shipments of express or freight
 4 if the lessee repudiates or fails to make a payment due before delivery,
 5 whether for rent, security, or otherwise under the lease contract, or for
 6 any other reason the lessor has a right to withhold or take possession of
 7 the goods.

8 (2) In pursuing its remedies under subsection (1), the lessor may
 9 stop delivery until:

10 (a) receipt of the goods by the lessee;

11 (b) acknowledgment to the lessee by any bailee of the goods,
 12 except a carrier, that the bailee holds the goods for the lessee; or

13 (c) such an acknowledgment to the lessee by a carrier via
 14 reshipment or as ~~warehouseman~~ **a warehouse.**

15 (3)(a) To stop delivery, a lessor shall so notify as to enable the
 16 bailee by reasonable diligence to prevent delivery of the goods.

17 (b) After notification, the bailee shall hold and deliver the goods
 18 according to the directions of the lessor, but the lessor is liable to
 19 the bailee for any ensuing charges or damages.

20 (c) A carrier who has issued a nonnegotiable bill of lading is not
 21 obliged to obey a notification to stop received from a person other
 22 than the consignor.

23 SECTION 22. IC 26-1-4-104 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (a) In IC 26-1-4,
 25 unless the context otherwise requires:

26 (1) "Account" means any deposit or credit account with a bank,
 27 including a demand, time, savings, passbook, share draft, or like
 28 account, other than an account evidenced by a certificate of
 29 deposit.

30 (2) "Afternoon" means the period of a day between noon and
 31 midnight.

32 (3) "Banking day" means the part of a day on which a bank is
 33 open to the public for carrying on substantially all of its banking
 34 functions, but does not include Saturday, Sunday, or a legal
 35 holiday.

36 (4) "Clearing house" means an association of banks or other
 37 payors regularly clearing items.

38 (5) "Customer" means a person having an account with a bank or
 39 for whom a bank has agreed to collect items, including a bank that
 40 maintains an account at another bank.

41 (6) "Documentary draft" means a draft to be presented for
 42 acceptance or payment if specified documents, certificated

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securities (IC 26-1-8.1-102), or instructions for uncertificated securities (IC 26-1-8.1-102) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft (as defined in IC 26-1-3.1-104) or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by IC 26-1-4.1 or a credit or debit card slip.

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit, or by remittance, or otherwise as instructed. A settlement may be either provisional or final.

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to IC 26-1-4 and the sections in which they appear are:

"Agreement for electronic presentment". IC 26-1-4-110.

"Bank". IC 26-1-4-105.

"Collecting bank". IC 26-1-4-105.

"Depository bank". IC 26-1-4-105.

"Intermediary bank". IC 26-1-4-105.

"Payor bank". IC 26-1-4-105.

"Presenting bank". IC 26-1-4-105.

"Presentment notice". IC 26-1-4-110.

(c) **"Control" as provided in IC 26-1-7-106 and the following definitions in IC 26-1-3.1 apply to IC 26-1-4:**

"Acceptance". IC 26-1-3.1-409.

"Alteration". IC 26-1-3.1-407.

"Cashier's check". IC 26-1-3.1-104.

"Certificate of deposit". IC 26-1-3.1-104.

"Certified check". IC 26-1-3.1-409.

"Check". IC 26-1-3.1-104.

"Holder in due course". IC 26-1-3.1-302.

"Instrument". IC 26-1-3.1-104.

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1 "Notice of dishonor". IC 26-1-3.1-503.

2 "Order". IC 26-1-3.1-103.

3 "Ordinary care". IC 26-1-3.1-103.

4 "Person entitled to enforce". IC 26-1-3.1-301.

5 "Presentment". IC 26-1-3.1-501.

6 "Promise". IC 26-1-3.1-103.

7 "Prove". IC 26-1-3.1-103.

8 "Teller's check". IC 26-1-3.1-104.

9 "Unauthorized signature". IC 26-1-3.1-403.

10 (d) In addition, IC 26-1-1 contains general definitions and principles
11 of construction and interpretation applicable throughout IC 26-1-4.

12 SECTION 23. IC 26-1-4-210 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 210. (a) A collecting
14 bank has a security interest in an item and any accompanying
15 documents or the proceeds of either:

16 (1) in the case of an item deposited in an account, to the extent to
17 which credit given for the item has been withdrawn or applied;

18 (2) in the case of an item for which it has given credit available
19 for withdrawal as of right, to the extent of the credit given,
20 whether or not the credit is drawn upon or there is a right of
21 charge-back; or

22 (3) if it makes an advance on or against the item.

23 (b) If credit given for several items received at one (1) time or under
24 a single agreement is withdrawn or applied in part, the security interest
25 remains upon all the items, any accompanying documents, or the
26 proceeds of either. For the purpose of this section, credits first given
27 are first withdrawn.

28 (c) Receipt by a collecting bank of a final settlement for an item is
29 a realization on its security interest in the item, accompanying
30 documents, and proceeds. So long as the bank does not receive final
31 settlement for the item or give up possession of the item or **possession**
32 **or control of the** accompanying documents for purposes other than
33 collection, the security interest continues to that extent and is subject
34 to IC 26-1-9.1, but:

35 (1) no security agreement is necessary to make the security
36 interest enforceable (IC 26-1-9.1-203(b)(3)(A));

37 (2) no filing is required to perfect the security interest; and

38 (3) the security interest has priority over conflicting perfected
39 security interests in the item, accompanying documents, or
40 proceeds.

41 SECTION 24. IC 26-1-7-101 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 101. ~~IC 26-1-7 shall be~~

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~~known and~~ **This chapter** may be cited as Uniform Commercial Code
– Documents of Title.

SECTION 25. IC 26-1-7-102 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. ~~(1)~~ **(a)** In
~~IC 26-1-7, this chapter~~ unless the context otherwise requires:

~~(a)~~ **(1)** "Bailee" means ~~the a person who that~~ by a warehouse
receipt, bill of lading, or other document of title acknowledges
possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

~~(b)~~ **(3)** "Consignee" means ~~the a person named in a bill of lading~~
to ~~whom which~~ or to whose order the bill promises delivery.

~~(c)~~ **(4)** "Consignor" means ~~the a person named in a bill of lading~~
as the person from ~~whom which~~ the goods have been received for
shipment.

~~(d)~~ **(5)** "Delivery order" means a ~~written record that contains an~~
order to deliver goods directed to a ~~warehouseman, warehouse,~~
carrier, or other person ~~who that~~ in the ordinary course of
business issues warehouse receipts or bills of lading.

~~(e)~~ "Document" means document of title as defined in the general
definitions in ~~IC 26-1-1-201~~.

**(6) "Good faith" means honesty in fact and the observance of
reasonable commercial standards of fair dealing.**

~~(f)~~ **(7)** "Goods" means all things ~~which that~~ are treated as
movable for the purposes of a contract ~~of for~~ storage or
transportation.

~~(g)~~ **(8)** "Issuer" means a bailee ~~who that~~ issues a document ~~except~~
~~that of title or, in relation to the case of~~ an unaccepted delivery
order, it means the person ~~who that~~ orders the possessor of goods
to deliver. ~~Issuer~~ The term includes ~~any a~~ person for ~~whom~~
~~which~~ an agent or employee purports to act in issuing a document
if the agent or employee has real or apparent authority to issue
documents, ~~notwithstanding that even if~~ the issuer ~~received no~~
~~did not receive any~~ goods, ~~or that~~ the goods were misdescribed,
or ~~that in any other respect~~ the agent or ~~employees employee~~
violated ~~his the~~ issuer's instructions.

**(9) "Person entitled under the document" means the holder,
in the case of a negotiable document of title, or the person to
which delivery of the goods is to be made by the terms of, or
pursuant to instructions in a record under, a nonnegotiable
document of title.**

**(10) "Record" means information that is inscribed on a
tangible medium or that is stored in an electronic or other**

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medium and is retrievable in perceivable form.

(11) "Shipper" means a person that enters into a contract of transportation with a carrier.

(12) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(h) ~~"Warehouseman"~~ is (13) "Warehouse" means a person engaged in the business of storing goods for hire.

~~(2)~~ (b) Other definitions applying to ~~IC 26-1-7~~ this chapter and the sections in which they appear are:

"Duly negotiate". IC 26-1-7-501.

"Person entitled under the document". ~~IC 26-1-7-403(4)~~.

~~(3)~~ Definitions in ~~IC 26-1-2~~ applying to ~~IC 26-1-7~~ and the sections in which they appear are:

"Contract for sale". IC 26-1-2-106.

~~"Overseas". IC 26-1-2-323.~~

"Lessee in the ordinary course of business". IC 26-1-2.1-103(o).

"Receipt" of goods. IC 26-1-2-103.

~~(4)~~ (c) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout ~~IC 26-1-7~~. this chapter.

SECTION 26. IC 26-1-7-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. ~~To the extent that~~

(a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state or tariff, classification, rule, or regulation filed or issued pursuant thereto is applicable; the provisions of ~~IC 26-1-7~~ are subject thereto: to the extent the treaty, statute, or regulatory statute applies.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic

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1 delivery of any of the notices described in section 103(b) of that act
2 (15 U.S.C. 7003(b)).

3 (d) To the extent there is a conflict between IC 26-2-8 and this
4 chapter, this chapter governs.

5 SECTION 27. IC 26-1-7-104 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. ~~(+) (a) Except as~~
7 ~~otherwise provided in subsection (c), a warehouse receipt, bill of~~
8 ~~lading or other~~ document of title is negotiable

9 ~~(a)~~ if by its terms the goods are to be delivered to bearer or to the
10 order of a named person. ~~or~~

11 ~~(b) where recognized in overseas trade; if it runs to a named person~~
12 ~~or assigns.~~

13 ~~(2) Any other (b) A document of title other than one described in~~
14 ~~subsection (a) is nonnegotiable. A bill of lading in which it is stated~~
15 ~~that states that the goods are consigned to a named person is not made~~
16 ~~negotiable by a provision that the goods are to be delivered only against~~
17 ~~a written an order in a record signed by the same or another named~~
18 ~~person.~~

19 (c) A document of title is nonnegotiable if, at the time it is issued,
20 the document has a conspicuous legend, however expressed, that it
21 is nonnegotiable.

22 SECTION 28. IC 26-1-7-105 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 105. ~~The omission from~~
24 ~~either part 2 (IC 26-1-7-201 through IC 26-1-7-210) or part 3~~
25 ~~(IC 26-1-7-301 through IC 26-1-7-309) of a provision corresponding~~
26 ~~to a provision made in the other part does not imply that a~~
27 ~~corresponding rule of law is not applicable: (a) Upon request of a~~
28 ~~person entitled under an electronic document of title, the issuer of~~
29 ~~the electronic document may issue a tangible document of title as~~
30 ~~a substitute for the electronic document if:~~

31 (1) the person entitled under the electronic document
32 surrenders control of the document to the issuer; and

33 (2) the tangible document when issued contains a statement
34 that it is issued in substitution for the electronic document.

35 (b) Upon issuance of a tangible document of title in substitution
36 for an electronic document of title in accordance with subsection
37 (a):

38 (1) the electronic document ceases to have any effect or
39 validity; and

40 (2) the person that procured issuance of the tangible
41 document warrants to all subsequent persons entitled under
42 the tangible document that the warrantor was a person

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entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SECTION 29. IC 26-1-7-106 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the

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consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SECTION 30. IC 26-1-7-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. ~~(1)~~ (a) A warehouse receipt may be issued by any ~~warehouseman~~ **warehouse**.

~~(2)~~ ~~Where~~ (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as is~~ **considered to be** a warehouse receipt even ~~though~~ **if** issued by a person ~~who~~ **that** is the owner of the goods and is not a ~~warehouseman~~ **warehouse**.

SECTION 31. IC 26-1-7-202 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 202. ~~(1)~~ (a) A warehouse receipt need not be in any particular form.

~~(2)~~ (b) Unless a warehouse receipt ~~embodies within its written or printed terms~~ **provides for** each of the following, the ~~warehouseman~~ **warehouse** is liable for damages caused by ~~the omission~~ to a person injured ~~thereby~~ **by its omission**:

~~(a)~~ (1) a statement of the location of the warehouse facility where the goods are stored;

~~(b)~~ (2) the date of issue of the receipt;

~~(c)~~ (3) the ~~consecutive number~~ **unique identification code** of the receipt;

~~(d)~~ (4) a statement whether the goods received will be delivered to the bearer, to a ~~specified~~ **named** person, or to a ~~specified~~ **named** person or ~~his~~ **the person's** order;

~~(e)~~ (5) the rate of storage and handling charges, ~~except that where~~ **unless** goods are stored under a field warehousing arrangement, **in which case** a statement of that fact is sufficient on a nonnegotiable receipt;

~~(f)~~ (6) a description of the goods or ~~of~~ the packages containing them;

~~(g)~~ (7) the signature of the ~~warehouseman~~, which may be made by ~~his~~ **authorized warehouse or its agent**;

~~(h)~~ (8) if the receipt is issued for goods ~~of which~~ **that** the ~~warehouseman is owner~~, **warehouse owns**, either solely, or jointly, or in common with others, the fact of ~~such~~ **that**

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ownership; and

(+) (9) a statement of the amount of advances made and of liabilities incurred for which the ~~warehouseman~~ **warehouse** claims a lien or security interest (~~IC 26-1-7-209~~). ~~If~~ **unless** the precise amount of ~~such~~ advances made or ~~of such~~ liabilities incurred ~~is~~, at the time of the issue of the receipt **is** unknown to the ~~warehouseman~~ **warehouse** or to ~~his~~ **its** agent ~~who issues it~~, **that issued the receipt, in which case** a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof of the advances or liabilities~~ **is** sufficient.

(3) (c) A ~~warehouseman~~ **warehouse** may insert in ~~his~~ **its** receipt any other terms ~~which that~~ are not contrary to the provisions of IC 26-1 and do not impair ~~his~~ **its** obligation of delivery (~~IC 26-1-7-403~~) **under section 403 of this chapter** or ~~his~~ **its** duty of care (~~IC 26-1-7-204~~). **under section 204 of this chapter.** Any contrary provisions ~~shall be~~ **are** ineffective.

SECTION 32. IC 26-1-7-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 203. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, ~~relying in either case that relies~~ upon the description ~~therein~~ of the goods **in the document** may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether **all or** any part ~~or all~~ of the goods in fact were received or conform to the description, **such as where a case in which** the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or ~~the like~~, **words of similar import**, if ~~such the~~ indication ~~be~~ **is** true; or

(2) the party or purchaser otherwise has notice **of the nonreceipt or misdescription.**

SECTION 33. IC 26-1-7-204 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 204. (+) (a) A ~~warehouseman~~ **warehouse** is liable for damages for loss of or injury to the goods caused by ~~his~~ **its** failure to exercise ~~such~~ care ~~in with~~ regard to ~~them as the goods that~~ a reasonably careful ~~man~~ **person** would exercise under ~~like~~ **similar** circumstances. ~~but~~ Unless otherwise agreed, ~~he the~~ **the warehouse** is not liable for damages ~~which that~~ could not have been avoided by the exercise of ~~such that~~ care.

(2) (b) Damages may be limited by a term in the warehouse receipt

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or storage agreement limiting the amount of liability in case of loss or damage and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall warehouse is not be liable. provided, however, that such liability may on written **Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use.** On request of the bailor in a record at the time of signing ~~such the~~ storage agreement or within a reasonable time after receipt of the warehouse receipt, **the warehouse's liability may** be increased on part or all of the goods thereunder, in which covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on ~~such an~~ increased valuation ~~but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.~~ **of the goods.**

(3) (c) Reasonable provisions as to the time and manner of presenting claims and instituting **commencing** actions based on the bailment may be included in the warehouse receipt or ~~tariff.~~ **storage agreement.**

SECTION 34. IC 26-1-7-205 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 205. A buyer in the ordinary course of business of fungible goods sold and delivered by a ~~warehouseman who warehouse~~ **that** is also in the business of buying and selling such goods takes **the goods** free of any claim under a warehouse receipt even ~~though it if the receipt is negotiable and~~ has been duly negotiated.

SECTION 35. IC 26-1-7-206 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 206. (1) (a) A ~~warehouseman may on notifying warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if no a period is not fixed, within a stated period not less than thirty (30) days after the notification.~~ **warehouse gives notice.** If the goods are not removed before the date specified in the ~~notification; notice,~~ the ~~warehouseman warehouse~~ may sell them ~~in accordance with the provisions of the under section 210 of this chapter~~ on enforcement of a ~~warehouseman's warehouse's~~ lien. ~~(IC 26-1-7-210).~~

(2) (b) If a ~~warehouseman warehouse~~ in good faith believes that ~~the~~ goods are about to deteriorate or decline in value to less than the

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amount of ~~his~~ **its** lien within the time ~~prescribed~~ **provided** in subsection ~~(1)~~ **(a)** for notification, advertisement, and sale; **(a) and section 210 of this chapter**, the ~~warehouseman~~ **warehouse** may specify in the ~~notification notice given under subsection (a)~~ any reasonable shorter time for removal of the goods and, ~~in case if~~ the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.

~~(3)~~ **(c)** If, as a result of a quality or condition of the goods of which the ~~warehouseman~~ **warehouse** ~~had no~~ **did not have** notice at the time of deposit, the goods are a hazard to other property, ~~or to the warehouse facilities, or to other persons~~, the ~~warehouseman~~ **warehouse** may sell the goods at public or private sale without advertisement ~~or posting~~ on reasonable notification to all persons known to claim an interest in the goods. If the ~~warehouseman~~ **warehouse**, after a reasonable effort, is unable to sell the goods, ~~he~~ **the warehouse** may dispose of them in any lawful manner and ~~shall~~ **does not** incur ~~no~~ liability by reason of ~~such~~ **the** disposition.

~~(4)~~ **(d)** ~~The warehouseman must~~ **A warehouse shall** deliver the goods to any person entitled to them under ~~IC 26-1-7~~ **this chapter** upon due demand made at any time ~~prior to~~ **before** sale or other disposition under this section.

~~(5)~~ **(e)** ~~The warehouseman~~ **A warehouse** may satisfy ~~his~~ **its** lien from the proceeds of any sale or disposition under this section but ~~must~~ **shall** hold the balance for delivery on the demand of any person to ~~whom he~~ **which the warehouse** would have been bound to deliver the goods.

SECTION 36. IC 26-1-7-207 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 207. ~~(1)~~ **(a)** Unless the warehouse receipt otherwise provides, a ~~warehouseman must~~ **warehouse shall** keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. ~~except that~~ **However**, different lots of fungible goods may be commingled.

~~(2)~~ **(b)** ~~If different lots of fungible goods so are~~ **are** commingled, ~~the goods~~ are owned in common by the persons entitled thereto and the ~~warehouseman~~ **warehouse** is severally liable to each owner for that owner's share. ~~Where~~ **If** because of overissue, a mass of fungible goods is insufficient to meet all the receipts ~~which~~ the ~~warehouseman~~ **warehouse** has issued against it, the persons entitled include all holders to ~~whom~~ **which** overissued receipts have been duly negotiated.

SECTION 37. IC 26-1-7-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 208. ~~Where~~ **If** a blank

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in a negotiable **tangible** warehouse receipt has been filled in without authority, a **good faith** purchaser for value and without notice of the ~~want~~ **lack** of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any **tangible or electronic warehouse** receipt enforceable against the issuer according to its original tenor.

SECTION 38. IC 26-1-7-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 209. ~~(†)~~ **(a)** A ~~warehouseman warehouse~~ has a lien against the bailor on the goods covered by a warehouse receipt **or storage agreement** or on the proceeds thereof in ~~his~~ **its** possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or **other** charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ **similar** charges or expenses in relation to other goods whenever deposited and it is stated in the **warehouse's** receipt **or storage agreement** that a lien is claimed for charges and expenses in relation to other goods, the ~~warehouseman warehouse~~ also has a lien against ~~him~~ **for such the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for the** charges and expenses, whether or not the other goods have been delivered by the ~~warehouseman~~. **But warehouse. However, as** against a person to ~~whom~~ **which** a negotiable warehouse receipt is duly negotiated, a ~~warehouseman's warehouse's~~ lien is limited to charges in an amount or at a rate specified ~~on~~ **in** the **warehouse** receipt or, if no charges are so specified, ~~then~~ to a reasonable charge for storage of the **specific** goods covered by the receipt subsequent to the date of the receipt.

~~(2) The warehouseman~~ **(b) A warehouse** may also reserve a security interest against the bailor for ~~a~~ **the** maximum amount specified on the receipt for charges other than those specified in subsection ~~(†)~~ **(a)**, such as for money advanced and interest. ~~Such a~~ **The** security interest is governed by IC 26-1-9.1 on secured transactions.

~~(3) A warehouseman's~~ **(c) A warehouse's** lien for charges and expenses under subsection ~~(†)~~ **(a)** or a security interest under subsection ~~(2)~~ **(b)** is also effective against any person ~~who so~~ **that** entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ **the bailor** to a good faith purchaser for value would have been valid. ~~but~~ **However, the lien or security interest** is not effective against a person as to whom the document confers no right in the goods covered by it under ~~IC 26-1-7-503~~. **that before issuance of a document of title had a legal interest or a perfected security**

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interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 403 of this chapter; or

(C) power of disposition under IC 26-1-2-403, IC 26-1-2.1-304(2), IC 26-1-2.1-305(2), IC 26-1-9.1-320, or IC 26-1-9.1-321 or any other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) For purposes of this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit.

(4) (e) A warehouseman warehouse loses ~~his~~ its lien on any goods which ~~he~~ that the warehouse voluntarily delivers or which ~~he~~ unjustifiably refuses to deliver.

SECTION 39. IC 26-1-7-210 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 210. ~~(1)~~ (a) Except as otherwise provided in subsection ~~(2)~~; (b), a warehouseman's warehouse's lien may be enforced by public or private sale of the goods, in ~~block bulk~~ or in ~~parcels~~, packages, at any time or place and on any terms which ~~that~~ are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different ~~method~~ from that selected by the warehouseman warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouseman either warehouse sells the goods in the usual manner in any recognized market therefor, or if ~~he~~ sells at the price current in such that market at the time of his the warehouse's sale, or if ~~he~~ has otherwise ~~sold~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold. ~~he has sold in a commercially reasonable manner.~~ A sale of more goods than apparently necessary to be offered to ~~insure~~ ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the

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preceding sentence.

~~(2)~~ **(b)** A ~~warehouseman's warehouse~~ **may enforce its** lien on goods other than goods stored by a merchant in the course of ~~his its~~ business ~~may be enforced only as follows: if the following requirements are satisfied:~~

~~(a)~~ **(1)** All persons known to claim an interest in the goods must be notified.

~~(b)~~ The notification must be delivered in person or sent by registered letter to the last known address of any person to be notified.

~~(c)~~ **(2)** The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~(d)~~ **(3)** The sale must conform to the terms of the notification.

~~(e)~~ **(4)** The sale must be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)~~ **(5)** After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account ~~they the goods~~ are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not ~~less fewer~~ than six (6) conspicuous places in the neighborhood of the proposed sale.

~~(3)~~ **(c)** Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under in complying with~~ this section. In that event, the goods ~~must may~~ not be sold but must be retained by the ~~warehouseman warehouse~~ subject to the terms of the receipt and ~~to 26-1-7: this chapter.~~

~~(4)~~ The ~~warehouseman~~ **(d) A warehouse** may buy at any public sale held pursuant to this section.

~~(5)~~ **(e)** A purchaser in good faith of goods sold to enforce a ~~warehouseman's warehouse's~~ lien takes the goods free of any rights of

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persons against ~~whom~~ **which** the lien was valid, despite ~~noncompliance~~ by the ~~warehouseman~~ **warehouse's noncompliance** with the requirements of this section.

(6) ~~The warehouseman~~ **(f) A warehouse** may satisfy ~~his~~ **its** lien from the proceeds of any sale pursuant to this section but ~~must~~ **shall** hold the balance, if any, for delivery on demand to any person to ~~whom~~ **he which the warehouse** would have been bound to deliver the goods.

(7) ~~(g)~~ The rights provided by this section ~~shall be~~ **are** in addition to all other rights allowed by law to a creditor against ~~his~~ **a** debtor.

(8) ~~Where~~ **(h) If** a lien is on goods stored by a merchant in the course of ~~his~~ **its** business, the lien may be enforced in accordance with either subsection (1) **(a)** or (2) **(b)**.

(9) ~~The warehouseman~~ **(i) A warehouse** is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

SECTION 40. IC 26-1-7-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 301. (1) **(a)** A consignee of a nonnegotiable bill ~~who~~ **of lading that** has given value in good faith, or a holder to ~~whom~~ **which** a negotiable bill has been duly negotiated, relying ~~in either case~~ upon the description ~~therein~~ of the goods **in the bill** or upon the date ~~therein~~ shown **in the bill**, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~document~~ **bill** indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, **such as where in a case in which** the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count" or ~~the like~~, **words of similar import**, if ~~such that~~ **that** indication ~~be~~ **is** true.

(2) ~~When~~ **(b) If** goods are loaded by ~~an~~ **the** issuer ~~who is a common carrier; of a bill of lading:~~

(1) the issuer ~~must~~ **shall** count the packages of goods if ~~package freight shipped in packages~~ and ascertain the kind and quantity if ~~shipped in bulk; freight. in and~~

(2) **words** such ~~cases as~~ "shipper's weight, load, and count" or ~~other words of similar import~~ indicating that the description was made by the shipper are ineffective except as to **freight goods** concealed ~~by in~~ packages.

(3) ~~When~~ **(c) If** bulk ~~freight is~~ **goods are** loaded by a shipper ~~who that makes available to the issuer of a bill of lading~~ **adequate facilities**

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for weighing ~~such freight, and the goods,~~ the issuer who is a common carrier ~~must shall~~ ascertain the kind and quantity within a reasonable time after receiving the ~~written shipper's request of the shipper in a record~~ to do so. In ~~such cases that case,~~ "shipper's weight" or other words of ~~like purport similar import~~ are ineffective.

(4) (d) The issuer ~~may of a bill of lading,~~ by ~~inserting including~~ in the bill the words "shipper's weight, load, and count" or other words of ~~like purport similar import~~ indicate that the goods were loaded by the shipper, and if ~~such the~~ statement ~~be is~~ true, the issuer ~~shall is~~ not be liable for damages caused by the improper loading. ~~But their~~ However, omission of such words does not imply liability for such damages caused by improper loading.

(5) The (e) A shipper ~~shall be deemed to have guaranteed~~ guarantees to ~~the an~~ issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by ~~him; the shipper,~~ and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such those~~ particulars. ~~The This~~ right of the issuer to such indemnity ~~shall in no way does not limit his the issuer's responsibility and or liability~~ under the contract of carriage to any person other than the shipper.

SECTION 41. IC 26-1-7-302 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 302. (1) (a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by ~~persons a person~~ acting as its agents agent or by connecting carriers a performing carrier is liable to ~~anyone any person~~ entitled to recover on the bill or other document for any breach by ~~such the other persons person~~ or by a connecting the performing carrier of its obligation under the bill or other document. ~~but However,~~ to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) Where (b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by ~~persons a person~~ other than the issuer are received by ~~any such that~~ person, ~~he the person~~ is subject, with respect to ~~his its~~ own performance while the goods are in ~~his its~~ possession, to the obligation of the issuer. ~~His The person's~~ obligation is discharged by delivery of the goods to another ~~such~~ person pursuant to the bill or other document and does not include liability for breach by any other ~~such persons person~~ or by the issuer.

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(3) (c) The issuer of ~~such a~~ through bill of lading or other document ~~shall be of title described in subsection (b)~~ is entitled to recover from the ~~connecting performing~~ carrier or ~~such~~ other person in possession of the goods when the breach of the obligation under the **bill or other** document occurred:

(1) the amount it may be required to pay to ~~anyone~~ **any person** entitled to recover on the **bill or other** document ~~therefor~~; **for the breach**, as may be evidenced by any receipt, judgment, or transcript ~~thereof~~; **of judgment**; and

(2) the amount of any expense reasonably incurred by ~~it~~ **the issuer** in defending any action ~~brought commenced~~ by any ~~one~~ **person** entitled to recover on the **bill or other** document ~~therefor~~; **for the breach**.

SECTION 42. IC 26-1-7-303 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 303. (1) (a) Unless the bill of lading otherwise provides, ~~the a~~ carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, **without liability for misdelivery**, on instructions from:

(a) (1) the holder of a negotiable bill; ~~or~~

(b) (2) the consignor on a nonnegotiable bill ~~notwithstanding even if the consignee has given~~ contrary instruction ~~from the consignee~~; ~~or instructions~~;

(c) (3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the **tangible bill or in control of the electronic bill**; or

(d) (4) the consignee on a nonnegotiable bill if ~~he~~ **the consignee** is entitled as against the consignor to dispose of ~~them~~; **the goods**.

(2) (b) Unless ~~such~~ instructions **described in subsection (a)** are ~~noted on~~ **included in** a negotiable bill of lading, a person to ~~whom~~ **which** the bill is duly negotiated ~~can~~ **may** hold the bailee according to the original terms.

SECTION 43. IC 26-1-7-304 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 304. (1) (a) Except ~~where as~~ customary in ~~overseas~~ **international** transportation, a **tangible** bill of lading ~~must~~ **may** not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) ~~Where~~ (b) If a **tangible** bill of lading is lawfully ~~drawn~~ **issued** in a set of parts, each of which is ~~numbered~~ **contains an identification code** and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts ~~constitute~~

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constitutes one (1) bill.

~~(3) Where~~ **(c) If a tangible negotiable** bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~whom~~ **which** the first due negotiation is made prevails as to both the document **of title** and the goods even ~~though if~~ any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by ~~surrender of his~~ **surrendering its** part.

~~(4) Any~~ **(d) A person who that** negotiates or transfers a single part of a **tangible** bill of lading ~~drawn~~ **issued** in a set is liable to holders of that part as if it were the whole set.

~~(5) (e) The bailee is obliged to~~ **shall** deliver in accordance with ~~IC 26-1-7-401 through IC 26-1-7-404~~ **sections 401 through 404 of this chapter** against the first presented part of a **tangible** bill of lading lawfully ~~drawn~~ **issued** in a set. ~~Such~~ **Delivery in this manner** discharges the bailee's obligation on the whole bill.

SECTION 44. IC 26-1-7-305 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 305. ~~(+)~~ **(a)** Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier may at the request of the consignor procure the bill to be issued at a destination or at any other place designated in the request.

~~(2) (b) Upon request of anyone~~ **any person** entitled as against ~~the~~ **a** carrier to control the goods while in transit and on ~~surrender of~~ **possession or control** of any outstanding bill of lading or other receipt covering ~~such~~ **the** goods, the issuer, **subject to section 105 of this chapter**, may procure a substitute bill to be issued at any place designated in the request.

SECTION 45. IC 26-1-7-307 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 307. ~~(+)~~ **(a)** A carrier has a lien on the goods covered by a bill of lading **or on the proceeds from the goods** for charges ~~subsequent to~~ **after** the date of ~~its~~ **the carrier's** receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~But~~ **However**, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, ~~then to~~ a reasonable charge.

~~(2) (b)~~ **(b)** A lien for charges and expenses under subsection ~~(+)~~ **(a)** on goods ~~which~~ **that** the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked

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1 authority to subject the goods to ~~such~~ those charges and expenses. Any
 2 other lien under subsection ~~(1)~~ (a) is effective against the consignor
 3 and any person ~~who~~ that permitted the bailor to have control or
 4 possession of the goods unless the carrier had notice that the bailor
 5 lacked ~~such~~ authority.

6 ~~(3)~~ (c) A carrier loses ~~his~~ its lien on any goods ~~which he~~ that it
 7 voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

8 SECTION 46. IC 26-1-7-308 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 308. ~~(1)~~ (a) A carrier's
 10 lien **on goods** may be enforced by public or private sale of the goods,
 11 in ~~block~~ bulk or in ~~parcels~~, **packages**, at any time or place, and on any
 12 terms ~~which~~ that are commercially reasonable, after notifying all
 13 persons known to claim an interest in the goods. ~~Such~~ The notification
 14 must include a statement of the amount due, the nature of the proposed
 15 sale, and the time and place of any public sale. The fact that a better
 16 price could have been obtained by a sale at a different time or in a
 17 **method** different ~~method~~ from that selected by the carrier is not of
 18 itself sufficient to establish that the sale was not made in a
 19 commercially reasonable manner. ~~If~~ The carrier ~~either~~ sells **goods in**
 20 **a commercially reasonable manner if the carrier sells** the goods in
 21 the usual manner in any recognized market therefor, ~~or if he~~ sells at the
 22 price current in ~~such~~ that market at the time of ~~his~~ the sale, or if ~~he~~ has
 23 otherwise ~~sold~~ **sells** in conformity with commercially reasonable
 24 practices among dealers in the type of goods sold. ~~he has sold in a~~
 25 **commercially reasonable manner**. A sale of more goods than apparently
 26 necessary to be offered to ensure satisfaction of the obligation is not
 27 commercially reasonable, except in cases covered by the preceding
 28 sentence.

29 ~~(2)~~ (b) Before any sale pursuant to this section, any person claiming
 30 a right in the goods may pay the amount necessary to satisfy the lien
 31 and the reasonable expenses incurred ~~under~~ **in complying with** this
 32 section. In that event, the goods ~~must~~ **may** not be sold but must be
 33 retained by the carrier, subject to the terms of the bill and ~~IC 26-1-7-~~
 34 **this chapter**.

35 ~~(3)~~ The (c) A carrier may buy at any public sale pursuant to this
 36 section.

37 ~~(4)~~ (d) A purchaser in good faith of goods sold to enforce a carrier's
 38 lien takes the goods free of any rights of persons against ~~whom~~ **which**
 39 the lien was valid, despite **the carrier's** noncompliance ~~by the carrier~~
 40 with ~~the requirements of~~ this section.

41 ~~(5)~~ The (e) A carrier may satisfy ~~his~~ its lien from the proceeds of
 42 any sale pursuant to this section but ~~must~~ **shall** hold the balance, if any,

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for delivery on demand to any person to ~~whom he~~ **which the carrier** would have been bound to deliver the goods.

~~(6) (f)~~ The rights provided by this section ~~shall be~~ **are** in addition to all other rights allowed by law to a creditor against ~~his~~ **a** debtor.

~~(7) (g)~~ A carrier's lien may be enforced ~~in accordance with~~ **pursuant to** either subsection ~~(+)~~ **(a)** or the procedure set forth in ~~IC 26-1-7-210(2)~~ **section 210(b) of this chapter.**

~~(8) The~~ **(h)** A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

SECTION 47. IC 26-1-7-309 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 309. ~~(+)~~ **(a)** A carrier ~~who that~~ issues a bill of lading, whether negotiable or nonnegotiable, ~~must shall~~ exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ **person** would exercise under ~~like~~ **similar** circumstances. This subsection does not ~~repeat or change~~ **affect** any law, **regulation**, or rule of law ~~which that~~ imposes liability upon a common carrier for damages not caused by its negligence.

~~(2) (b)~~ Damages may be limited by a ~~provision term in the bill of lading or in a transportation agreement~~ that the carrier's liability ~~shall may~~ not exceed a value stated in the ~~document bill or transportation agreement~~ if the carrier's rates are dependent upon value and the consignor ~~by the carrier's tariff~~ is afforded an opportunity to declare a higher value ~~or a value as lawfully provided in the tariff; or where no tariff is filed he and the consignor is otherwise advised of such the opportunity. but no~~ **However**, such a limitation is ~~not~~ effective with respect to the ~~carriers~~ **carrier's** liability for conversion to its own use.

~~(3) (c)~~ Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~ **commencing** actions based on the shipment may be included in a bill of lading or ~~tariff; a transportation agreement.~~

SECTION 48. IC 26-1-7-401 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 401. The obligations imposed by ~~IC 26-1-7 this chapter~~ on an issuer apply to a document of title ~~regardless of the fact that: even if:~~

~~(a) (1)~~ the document ~~may does~~ not comply with the requirements of ~~IC 26-1-7 this chapter~~ or of any other ~~law~~ **statute, rule, or** regulation regarding its ~~issue; issuance,~~ form, or content; ~~or~~

~~(b) (2)~~ the issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ **its** business; ~~or~~

~~(c) (3)~~ the goods covered by the document were owned by the

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bailee ~~at the time when~~ the document was issued; or
~~(d) (4)~~ the person issuing the document ~~does not come within the~~
~~definition of warehouseman if it is not a warehouse but the~~
~~document~~ purports to be a warehouse receipt.

SECTION 49. IC 26-1-7-402 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 402. ~~Neither~~ A
duplicate ~~nor or~~ any other document of title purporting to cover goods
already represented by an outstanding document of the same issuer
~~confers does not confer~~ any right in the goods, except as provided in
the case of **tangible bills of lading** in a set of **parts**, overissue of
documents for fungible goods, ~~and~~ substitutes for lost, stolen or
destroyed documents, **or substitute documents issued under section**
105 of this chapter. ~~But~~ The issuer is liable for damages caused by ~~his~~
its overissue or failure to identify a duplicate document ~~as such~~ by a
conspicuous notation. ~~on its face.~~

SECTION 50. IC 26-1-7-403 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 403. ~~(1) The~~ **(a)** A
bailee ~~must~~ **shall** deliver the goods to a person entitled under ~~the~~ a
document ~~who of title if the person~~ complies with subsections ~~(2) (b)~~
and ~~(3); (c),~~ unless and to the extent that the bailee establishes any of
the following:

~~(a) (1)~~ Delivery of the goods to a person whose receipt was
rightful as against the claimant.

~~(b) (2)~~ Damage to or delay, loss, or destruction of the goods for
which the bailee is not liable. ~~but the burden of establishing~~
~~negligence in such cases is on the person entitled under the~~
~~document whenever the claimed loss or destruction resulted from~~
~~fire; and the amount of the claimed loss or destruction under the~~
~~document exceeds the sum of ten thousand dollars (\$10,000).~~

~~(c) (3)~~ Previous sale or other disposition of the goods in lawful
enforcement of a lien or on ~~warehouseman's~~ **a warehouse's**
lawful termination of storage.

~~(d) (4)~~ The exercise by a seller of ~~his~~ **its** right to stop delivery
pursuant to the provisions of IC 26-1-2-705 **or by a lessor of its**
right to stop delivery under IC 26-1-2.1-526.

~~(e) (5)~~ A diversion, reconsignment, or other disposition pursuant
to the provisions of ~~IC 26-1-7-303~~ or tariff regulating such right:
section 303 of this chapter.

~~(f) (6)~~ Release, satisfaction, or any other ~~fact~~ affording a personal
defense against the claimant.

~~(g) (7)~~ Any other lawful excuse.

~~(2) (b)~~ A person claiming goods covered by a document of title ~~must~~

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1 shall satisfy the bailee's lien ~~where~~ if the bailee so requests or ~~where~~ if
 2 the bailee is prohibited by law from delivering the goods until the
 3 charges are paid.

4 (3) (c) Unless ~~the~~ a person claiming **the goods** is ~~one~~ a person
 5 against ~~whom~~ **which** the document ~~confers no of title does not confer~~
 6 a right under ~~IC 26-1-7-503(1)~~, ~~he~~ must **section 503(a) of this**
 7 **chapter:**

8 (1) **the person claiming the goods under a document shall**
 9 **surrender for cancellation possession or notation control of**
 10 **partial deliveries** any outstanding negotiable document covering
 11 the goods **for cancellation or indication of partial deliveries;**
 12 and

13 (2) the bailee ~~must~~ **shall** cancel the document or conspicuously
 14 **note indicate in the document** the partial delivery ~~thereon~~ or **be**
 15 **the bailee is** liable to any person to ~~whom~~ **which** the document is
 16 duly negotiated.

17 (4) "Person entitled under the document" means holder in the case
 18 of a negotiable document; or the person to whom delivery is to be made
 19 by the terms of or pursuant to written instructions under a
 20 nonnegotiable document.

21 SECTION 51. IC 26-1-7-404 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 404. A bailee ~~who that~~
 23 in good faith ~~including observance of reasonable commercial~~
 24 ~~standards~~; has received goods and delivered or otherwise disposed of
 25 ~~them~~ **the goods** according to the terms of ~~the~~ a document of title or
 26 pursuant to ~~IC 26-1-7~~ **this chapter** is not liable therefor. This rule
 27 **applies for the goods even though: if:**

28 (1) the person from ~~whom he~~ **which the bailee** received the goods
 29 ~~had no~~ **did not have** authority to procure the document or to
 30 dispose of the goods; and ~~even though or~~

31 (2) the person to ~~whom he~~ **which the bailee** delivered the goods
 32 ~~had no~~ **did not have** authority to receive ~~them: the goods.~~

33 SECTION 52. IC 26-1-7-501 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 501. (a) **The following**
 35 **rules apply to a negotiable tangible document of title:**

36 (1) ~~A negotiable document of title running~~ **If the document's**
 37 **original terms run** to the order of a named person, **the document**
 38 is negotiated by ~~his~~ **the named person's** endorsement and
 39 delivery. After ~~his~~ **the named person's** endorsement in blank or
 40 to bearer, any person ~~can~~ **may** negotiate it **the document by**
 41 delivery alone.

42 (2)(a) ~~A~~ (2) **If the negotiable document of title document's**

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original terms run to bearer, it is also negotiated by delivery alone. when by its original terms it runs to bearer.

(b) When a document running (3) If the document's original terms run to the order of a named person and it is delivered to him the named person, the effect is the same as if the document had been negotiated.

(3) (4) Negotiation of a negotiable the document of title after it has been endorsed to a specified named person requires endorsement by the special endorsee as well as and delivery.

(4) (5) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(5) (c) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(6) (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor or constitute notice to a purchaser thereof of the bill of any interest of such that person in the goods.

SECTION 53. IC 26-1-7-502 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 502. (1) (a) Subject to IC 26-1-7-503 and to the provisions of IC 26-1-7-205 on fungible

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goods, **sections 205 and 503 of this chapter**, a holder to ~~whom~~ **which** a negotiable document of title has been duly negotiated acquires thereby:

~~(a)~~ **(1)** title to the document;

~~(b)~~ **(2)** title to the goods;

~~(c)~~ **(3)** all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~(d)~~ **(4)** the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ **the issuer** except those arising under the terms of the document or under ~~IC 26-1-7~~ **this chapter**. In the case of a delivery order, the bailee's obligation accrues only upon **the bailee's acceptance of the delivery order**, and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

~~(2)~~ **(b)** Subject to ~~IC 26-1-7-503~~, **section 503 of this chapter**, title and rights ~~so~~ **acquired by due negotiation** are not defeated by any stoppage of the goods represented by the document **of title** or by surrender of ~~such~~ **the** goods by the bailee and are not impaired even ~~though~~ **if**:

(1) the **due** negotiation or any prior **due** negotiation constituted a breach of duty; ~~or even though~~

(2) any person has been deprived of possession of ~~the~~ **a negotiable tangible document or control of a negotiable electronic** document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; ~~or even though~~

(3) a previous sale or other transfer of the goods or document has been made to a third person.

SECTION 54. IC 26-1-7-503 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 503. ~~(+)~~ **(a)** A document of title confers no right in goods against a person ~~who~~ **that** before issuance of the document had a legal interest or a perfected security interest in ~~them~~ **the goods** and ~~who neither~~ **that did not**:

~~(a)~~ **(1)** ~~delivered~~ **deliver** or ~~entrusted them~~ **entrust the goods** or any document of title covering ~~them~~ **the goods** to the bailor or ~~his~~ **the bailor's** nominee with:

(A) actual or apparent authority to ship, store, or sell; ~~or with~~

(B) power to obtain delivery under ~~IC 26-1-7-403~~ **section 403 of this chapter**; or ~~with~~

(C) power of disposition under IC 26-1-2-403, IC 26-1-9.1-320, or other statute or rule of law; ~~nor or~~

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~~(b)~~ **(2)** acquiesce in the procurement by the bailor or his nominee of any document of title.

~~(2)~~ **(b)** Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ **any person to whom which** a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ **That** title may be defeated under ~~IC 26-1-7-504~~ **section 504 of this chapter** to the same extent as the rights of the issuer or a transferee from the issuer.

~~(3)~~ **(c)** Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ **any person to whom which** a bill issued by the freight forwarder ~~covering such goods has been~~ is duly negotiated. ~~but~~ **However**, delivery by the carrier in accordance with ~~IC 26-1-7-401~~ **sections 401** through ~~IC 26-1-7-404~~ **404 of this chapter** pursuant to its own bill of lading discharges the carrier's obligation to deliver.

SECTION 55. IC 26-1-7-504 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 504. ~~(1)~~ **(a)** A transferee of a document of title, whether negotiable or nonnegotiable, to ~~whom which~~ the document has been delivered but not duly negotiated, acquires the title and rights ~~which his~~ **that the** transferor had or had actual authority to convey.

~~(2)~~ **(b)** In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives ~~notification~~ **notice** of the transfer, the rights of the transferee may be defeated:

~~(a)~~ **(1)** by those creditors of the transferor ~~who that~~ could treat the ~~sale transfer~~ as void under IC 26-1-2-402 or **IC 26-1-2.1-308**; or

~~(b)~~ **(2)** by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~his~~ **the buyer's** rights; or

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

~~(c)~~ **(4)** as against the bailee by good faith dealings of the bailee with the transferor.

~~(3)~~ **(c)** A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver **the goods** to the consignee defeats the consignee's title to the goods if ~~they the goods~~ have been delivered to a buyer in ordinary course of business **or a lessee in ordinary course of business**, and, in any event, defeats the consignee's rights against the bailee.

~~(4)~~ **(d)** Delivery of **the goods** pursuant to a nonnegotiable document of title may be stopped by a seller under IC 26-1-2-705 **or a lessor**

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under **IC 26-1-2.1-526** and subject to the ~~requirement~~ **requirements** of due notification ~~there~~ provided **in those sections**. A bailee ~~honoring~~ **that honors** the seller's **or lessor's** instructions is entitled to be indemnified by the seller **or the lessor** against any resulting loss or expense.

SECTION 56. IC 26-1-7-505 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 505. The endorsement of a **tangible** document of title issued by a bailee does not make the endorser liable for any default by the bailee ~~or by~~ previous endorsers.

SECTION 57. IC 26-1-7-506 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 506. The transferee of a negotiable **tangible** document of title has a specifically enforceable right to have ~~his~~ **the** transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

SECTION 58. IC 26-1-7-507 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 507. ~~Where~~ **If** a person negotiates or ~~transfers~~ **delivers** a document of title for value, otherwise than as a mere intermediary under ~~IC 26-1-7-508~~, **then section 508 of this chapter**, unless otherwise agreed, ~~he warrants to his immediate purchaser only the transferor~~, in addition to any warranty made in selling **or leasing** the goods, **warrants to its immediate purchaser only that:**

- (a) ~~that~~ **(1)** the document is genuine; ~~and~~
- (b) ~~that he~~ **(2) the transferor** has no knowledge of any fact ~~which~~ **that** would impair ~~its the~~ **the document's** validity or worth; and
- (c) ~~that his~~ **(3) the** negotiation or ~~transfer~~ **delivery** is rightful and fully effective with respect to the title to the document and the goods it represents.

SECTION 59. IC 26-1-7-508 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 508. A collecting bank or other intermediary known to be entrusted with documents **of title** on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~such~~ delivery of the documents only its own good faith and authority ~~This rule applies even though if~~ the **collecting bank or other** intermediary has purchased or made advances against the claim or draft to be collected.

SECTION 60. IC 26-1-7-509 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 509. ~~The question~~ Whether a document **of title** is adequate to fulfill the obligations of a contract for sale, **a contract for lease**, or the conditions of a **letter of credit** is ~~governed~~ **determined** by IC 26-1-2, ~~on sales and~~ **IC 26-1-2.1**,

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1 or IC 26-1-5.1. ~~on letters of credit.~~

2 SECTION 61. IC 26-1-7-601 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 601. ~~(†)~~ **(a)** If a
4 document ~~has been of title is~~ lost, stolen, or destroyed, a court may
5 order delivery of the goods or issuance of a substitute document and
6 the bailee may without liability to any person comply with ~~such the~~
7 order. If the document was negotiable, **a court may not order delivery**
8 **of the goods or issuance of a substitute document without** the
9 claimant must post claimant's posting security approved by the court
10 to indemnify ~~unless it finds that~~ any person ~~who that~~ may suffer loss
11 as a result of nonsurrender **of possession or control** of the document
12 **is adequately protected against the loss.** If the document was ~~not~~
13 negotiable, such security may be required at the discretion of
14 **nonnegotiable, the court may require security.** The court may also in
15 its discretion order payment of the bailee's reasonable costs and ~~counsel~~
16 **attorney's fees in an action under this subsection.**

17 ~~(2)~~ **(b)** A bailee ~~who that~~, without a court order, delivers goods to
18 a person claiming under a missing negotiable document **of title** is liable
19 to any person injured thereby. ~~and~~ If the delivery is not in good faith,
20 ~~becomes the bailee is~~ liable for conversion. Delivery in good faith is
21 not conversion if ~~made in accordance with a filed classification or tariff~~
22 ~~or, where no classification or tariff is filed,~~ if the claimant posts
23 security with the bailee in an amount at least double the value of the
24 goods at the time of posting to indemnify any person injured by the
25 delivery ~~who that~~ files a notice of claim within one (1) year after the
26 delivery.

27 SECTION 62. IC 26-1-7-602 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 602. ~~Except where the~~
29 **Unless** a document **of title** was originally issued upon delivery of the
30 goods by a person ~~who had no that did not have~~ power to dispose of
31 them, ~~no a lien attaches does not attach~~ by virtue of any judicial
32 process to goods in the possession of a bailee for which a negotiable
33 document of title is outstanding unless **possession or control of the**
34 document ~~be is~~ first surrendered to the bailee or **its the document's**
35 negotiation is enjoined. ~~and~~ The bailee ~~shall may~~ not be compelled to
36 deliver the goods pursuant to process until **possession or control of the**
37 document is surrendered to ~~him the bailee~~ or **impounded by** the court.
38 ~~One who purchases A purchaser of~~ the document for value without
39 notice of the process or injunction takes free of the lien imposed by
40 judicial process.

41 SECTION 63. IC 26-1-7-603 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 603. If more than one

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(1) person claims title ~~to~~ or possession of the goods, the bailee is excused from ~~delivering~~ delivery until ~~he~~ the bailee has had a reasonable time to ascertain the validity of the adverse claims or to bring **commence** an action to ~~compel all claimants to interplead and may compel such for~~ interpleader. **The bailee may assert an interpleader** either in defending an action for nondelivery of the goods or by original action, whichever is appropriate.

SECTION 64. IC 26-1-8.1-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face amount certificate issued by a face amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by IC 26-1-8.1, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by IC 26-1-8.1 and not by IC 26-1-3.1, even though it also meets the requirements of that article. However, a negotiable instrument governed by IC 26-1-3.1 is a financial asset if it is held in a securities account.

(e) An option or a similar obligation issued by a clearing corporation to its participants is not a security, but it is a financial asset.

(f) A commodity contract (as defined in IC 26-1-9.1-102(a)(15)) is not a security or a financial asset.

(g) A document of title is not a financial asset unless section 102(a)(9)(iii) of this chapter applies.

SECTION 65. IC 26-1-9.1-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. (a) In IC 26-1-9.1:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by

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performance (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) that secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with the debtor's farming operation;

(B) that is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with the debtor's farming operation; or

(ii) leased real property to a debtor in connection with the

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- 1 debtor's farming operation; and
 2 (C) whose effectiveness does not depend on the person's
 3 possession of the personal property.
 4 (6) "As-extracted collateral" means:
 5 (A) oil, gas, or other minerals that are subject to a security
 6 interest that:
 7 (i) is created by a debtor having an interest in the minerals
 8 before extraction; and
 9 (ii) attaches to the minerals as extracted; or
 10 (B) accounts arising out of the sale at the wellhead or
 11 minehead of oil, gas, or other minerals in which the debtor had
 12 an interest before extraction.
 13 (7) "Authenticate" means:
 14 (A) to sign; or
 15 (B) to execute or otherwise adopt a symbol, or encrypt or
 16 similarly process a record in whole or in part, with the present
 17 intent of the authenticating person to identify the person and
 18 adopt or accept a record.
 19 (8) "Bank" means an organization that is engaged in the business
 20 of banking. The term includes savings banks, savings and loan
 21 associations, credit unions, and trust companies.
 22 (9) "Cash proceeds" means proceeds that are money, checks,
 23 deposit accounts, or the like.
 24 (10) "Certificate of title" means a certificate of title with respect
 25 to which a statute provides for the security interest in question to
 26 be indicated on the certificate as a condition or result of the
 27 security interest's obtaining priority over the rights of a lien
 28 creditor with respect to the collateral.
 29 (11) "Chattel paper" means a record or records that evidence both
 30 a monetary obligation and a security interest in specific goods, a
 31 security interest in specific goods and software used in the goods,
 32 a security interest in specific goods and license of software used
 33 in the goods, a lease of specific goods, or a lease of specific goods
 34 and license of software used in the goods. In this subdivision,
 35 "monetary obligation" means a monetary obligation secured by
 36 the goods or owed under a lease of the goods and includes a
 37 monetary obligation with respect to software used in the goods.
 38 The term "chattel paper" does not include: (i) charters or other
 39 contracts involving the use or hire of a vessel; or (ii) records that
 40 evidence a right to payment arising out of the use of a credit or
 41 charge card or information contained on or for use with the card.
 42 If a transaction is evidenced by records that include an instrument

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or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

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- 1 (C) in the case of transmission of a record to or by a filing
 2 office, to transmit a record by any means prescribed by
 3 filing-office rule.
- 4 (19) "Consignee" means a merchant to which goods are delivered
 5 in a consignment.
- 6 (20) "Consignment" means a transaction, regardless of its form,
 7 in which a person delivers goods to a merchant for the purpose of
 8 sale and:
- 9 (A) the merchant:
- 10 (i) deals in goods of that kind under a name other than the
 11 name of the person making delivery;
- 12 (ii) is not an auctioneer; and
- 13 (iii) is not generally known by its creditors to be
 14 substantially engaged in selling the goods of others;
- 15 (B) with respect to each delivery, the aggregate value of the
 16 goods is one thousand dollars (\$1,000) or more at the time of
 17 delivery;
- 18 (C) the goods are not consumer goods immediately before
 19 delivery; and
- 20 (D) the transaction does not create a security interest that
 21 secures an obligation.
- 22 (21) "Consignor" means a person that delivers goods to a
 23 consignee in a consignment.
- 24 (22) "Consumer debtor" means a debtor in a consumer
 25 transaction.
- 26 (23) "Consumer goods" means goods that are used or bought for
 27 use primarily for personal, family, or household purposes.
- 28 (24) "Consumer-goods transaction" means a consumer transaction
 29 in which:
- 30 (A) an individual incurs an obligation primarily for personal,
 31 family, or household purposes; and
- 32 (B) a security interest in consumer goods secures the
 33 obligation.
- 34 (25) "Consumer obligor" means an obligor who is an individual
 35 and who incurred the obligation as part of a transaction entered
 36 into primarily for personal, family, or household purposes.
- 37 (26) "Consumer transaction" means a transaction in which (i) an
 38 individual incurs an obligation primarily for personal, family, or
 39 household purposes, (ii) a security interest secures the obligation,
 40 and (iii) the collateral is held or acquired primarily for personal,
 41 family, or household purposes. The term includes
 42 consumer-goods transactions.

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(27) "Continuation statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in ~~IC 26-1-7-201(2)~~ **IC 26-1-7-201(b)**.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

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- 1 (36) "File number" means the number assigned to an initial
- 2 financing statement pursuant to IC 26-1-9.1-519(a).
- 3 (37) "Filing office" means an office designated in IC 26-1-9.1-501
- 4 as the place to file a financing statement.
- 5 (38) "Filing-office rule" means a rule adopted pursuant to
- 6 IC 26-1-9.1-526.
- 7 (39) "Financing statement" means a record or records composed
- 8 of an initial financing statement and any filed record relating to
- 9 the initial financing statement.
- 10 (40) "Fixture filing" means the filing of a financing statement
- 11 covering goods that are or are to become fixtures and satisfying
- 12 IC 26-1-9.1-502(a) and IC 26-1-9.1-502(b). The term includes the
- 13 filing of a financing statement covering goods of a transmitting
- 14 utility which are or are to become fixtures.
- 15 (41) "Fixtures" means goods that have become so related to
- 16 particular real property that an interest in them arises under real
- 17 property law.
- 18 (42) "General intangible" means any personal property, including
- 19 things in action, other than accounts, chattel paper, commercial
- 20 tort claims, deposit accounts, documents, goods, instruments,
- 21 investment property, letter-of-credit rights, letters of credit,
- 22 money, and oil, gas, or other minerals before extraction. The term
- 23 includes payment intangibles and software.
- 24 (43) "Good faith" means honesty in fact and the observance of
- 25 reasonable commercial standards of fair dealing.
- 26 (44) "Goods" means all things that are movable when a security
- 27 interest attaches. The term includes (i) fixtures, (ii) standing
- 28 timber that is to be cut and removed under a conveyance or
- 29 contract for sale, (iii) the unborn young of animals, (iv) crops
- 30 grown, growing, or to be grown, even if the crops are produced on
- 31 trees, vines, or bushes, and (v) manufactured homes. The term
- 32 also includes a computer program embedded in goods and any
- 33 supporting information provided in connection with a transaction
- 34 relating to the program if (i) the program is associated with the
- 35 goods in such a manner that it customarily is considered part of
- 36 the goods, or (ii) by becoming the owner of the goods, a person
- 37 acquires a right to use the program in connection with the goods.
- 38 The term does not include a computer program embedded in
- 39 goods that consist solely of the medium in which the program is
- 40 embedded. The term also does not include accounts, chattel
- 41 paper, commercial tort claims, deposit accounts, documents,
- 42 general intangibles, instruments, investment property,

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letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, that:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved

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by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under IC 26-1-9.1-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation

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secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in IC 26-1-9.1-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under IC 26-1-9.1-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in clause (A);

(D) the spouse of an individual described in clause (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in clause (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in IC 26-1-9.1-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

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(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to IC 26-1-9.1-620, IC 26-1-9.1-621, and IC 26-1-9.1-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor, or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an

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- 1 obligation secured by collateral against the debtor, another
 2 obligor, or property of either.
- 3 (72) "Secured party" means:
- 4 (A) a person in whose favor a security interest is created or
 5 provided for under a security agreement, whether or not any
 6 obligation to be secured is outstanding;
- 7 (B) a person that holds an agricultural lien;
- 8 (C) a consignor;
- 9 (D) a person to which accounts, chattel paper, payment
 10 intangibles, or promissory notes have been sold;
- 11 (E) a trustee, indenture trustee, agent, collateral agent, or other
 12 representative in whose favor a security interest or agricultural
 13 lien is created or provided for; or
- 14 (F) a person that holds a security interest arising under
 15 IC 26-1-2-401, IC 26-1-2-505, IC 26-1-2-711(3),
 16 IC 26-1-2.1-508(5), IC 26-1-4-210, or IC 26-1-5.1-118.
- 17 (73) "Security agreement" means an agreement that creates or
 18 provides for a security interest.
- 19 (74) "Send", in connection with a record or notification, means:
- 20 (A) to deposit in the mail, deliver for transmission, or transmit
 21 by any other usual means of communication, with postage or
 22 cost of transmission provided for, addressed to any address
 23 reasonable under the circumstances; or
- 24 (B) to cause the record or notification to be received within the
 25 time that it would have been received if properly sent under
 26 clause (A).
- 27 (75) "Software" means a computer program and any supporting
 28 information provided in connection with a transaction relating to
 29 the program. The term does not include a computer program that
 30 is included in the definition of goods.
- 31 (76) "State" means a state of the United States, the District of
 32 Columbia, Puerto Rico, the United States Virgin Islands, or any
 33 territory or insular possession subject to the jurisdiction of the
 34 United States.
- 35 (77) "Supporting obligation" means a letter-of-credit right or
 36 secondary obligation that supports the payment or performance of
 37 an account, chattel paper, a document, a general intangible, an
 38 instrument, or investment property.
- 39 (78) "Tangible chattel paper" means chattel paper evidenced by
 40 a record or records consisting of information that is inscribed on
 41 a tangible medium.
- 42 (79) "Termination statement" means an amendment of a financing

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statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **"Control" as provided in IC 26-1-7-106 and the following definitions outside IC 26-1-9.1 apply to IC 26-1-9.1:**

"Applicant" IC 26-1-5.1-102.

"Beneficiary" IC 26-1-5.1-102.

"Broker" IC 26-1-8.1-102.

"Certificated security" IC 26-1-8.1-102.

"Check" IC 26-1-3.1-104.

"Clearing corporation" IC 26-1-8.1-102.

"Contract for sale" IC 26-1-2-106.

"Customer" IC 26-1-4-104.

"Entitlement holder" IC 26-1-8.1-102.

"Financial asset" IC 26-1-8.1-102.

"Holder in due course" IC 26-1-3.1-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) IC 26-1-5.1-102.

"Issuer" (with respect to a security) IC 26-1-8.1-201.

"Issuer" (with respect to documents of title) IC 26-1-7-102.

"Lease" IC 26-1-2.1-103.

"Lease agreement" IC 26-1-2.1-103.

"Lease contract" IC 26-1-2.1-103.

"Leasehold interest" IC 26-1-2.1-103.

"Lessee" IC 26-1-2.1-103.

"Lessee in ordinary course of business" IC 26-1-2.1-103.

"Lessor" IC 26-1-2.1-103.

"Lessor's residual interest" IC 26-1-2.1-103.

"Letter of credit" IC 26-1-5.1-102.

"Merchant" IC 26-1-2-104.

"Negotiable instrument" IC 26-1-3.1-104.

"Nominated person" IC 26-1-5.1-102.

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- 1 "Note" IC 26-1-3.1-104.
 2 "Proceeds of a letter of credit" IC 26-1-5.1-114.
 3 "Prove" IC 26-1-3.1-103.
 4 "Sale" IC 26-1-2-106.
 5 "Securities account" IC 26-1-8.1-501.
 6 "Securities intermediary" IC 26-1-8.1-102.
 7 "Security" IC 26-1-8.1-102.
 8 "Security certificate" IC 26-1-8.1-102.
 9 "Security entitlement" IC 26-1-8.1-102.
 10 "Uncertificated security" IC 26-1-8.1-102.
 11 (c) IC 26-1-1 contains general definitions and principles of
 12 construction and interpretation applicable throughout IC 26-1-9.1.
 13 SECTION 66. IC 26-1-9.1-203 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 203. (a) A security
 15 interest attaches to collateral when it becomes enforceable against the
 16 debtor with respect to the collateral, unless an agreement expressly
 17 postpones the time of attachment.
 18 (b) Except as otherwise provided in subsections (c) through (i), a
 19 security interest is enforceable against the debtor and third parties with
 20 respect to the collateral only if:
 21 (1) value has been given;
 22 (2) the debtor has rights in the collateral or the power to transfer
 23 rights in the collateral to a secured party; and
 24 (3) one (1) of the following conditions is met:
 25 (A) The debtor has authenticated a security agreement that
 26 provides a description of the collateral and, if the security
 27 interest covers timber to be cut, a description of the land
 28 concerned.
 29 (B) The collateral is not a certificated security and is in the
 30 possession of the secured party under IC 26-1-9.1-313
 31 pursuant to the debtor's security agreement.
 32 (C) The collateral is a certificated security in registered form
 33 and the security certificate has been delivered to the secured
 34 party under IC 26-1-8.1-301 pursuant to the debtor's security
 35 agreement.
 36 (D) The collateral is deposit accounts, electronic chattel paper,
 37 investment property, ~~or~~ letter-of-credit rights, **or electronic**
 38 **documents**, and the secured party has control under
 39 **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105,
 40 IC 26-1-9.1-106, or IC 26-1-9.1-107 pursuant to the debtor's
 41 security agreement.
 42 (c) Subsection (b) is subject to IC 26-1-4-210 on the security

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1 interest of a collecting bank, IC 26-1-5.1-118 on the security interest of
 2 a letter-of-credit issuer or nominated person, IC 26-1-9.1-110 on a
 3 security interest arising under IC 26-1-2 or IC 26-1-2.1, and
 4 IC 26-1-9.1-206 on security interests in investment property.

5 (d) A person becomes bound as debtor by a security agreement
 6 entered into by another person if, by operation of law other than
 7 IC 26-1-9.1 or by contract:

8 (1) the security agreement becomes effective to create a security
 9 interest in the person's property; or

10 (2) the person becomes generally obligated for the obligations of
 11 the other person, including the obligation secured under the
 12 security agreement, and acquires or succeeds to all or
 13 substantially all of the assets of the other person.

14 (e) If a new debtor becomes bound as debtor by a security
 15 agreement entered into by another person:

16 (1) the agreement satisfies subsection (b)(3) with respect to
 17 existing or after-acquired property of the new debtor to the extent
 18 the property is described in the agreement; and

19 (2) another agreement is not necessary to make a security interest
 20 in the property enforceable.

21 (f) The attachment of a security interest in collateral gives the
 22 secured party the rights to proceeds provided by IC 26-1-9-315 and is
 23 also attachment of a security interest in a supporting obligation for the
 24 collateral.

25 (g) The attachment of a security interest in a right to payment or
 26 performance secured by a security interest or other lien on personal or
 27 real property is also attachment of a security interest in the security
 28 interest, mortgage, or other lien.

29 (h) The attachment of a security interest in a securities account is
 30 also attachment of a security interest in the security entitlements
 31 carried in the securities account.

32 (i) The attachment of a security interest in a commodity account is
 33 also attachment of a security interest in the commodity contracts
 34 carried in the commodity account.

35 SECTION 67. IC 26-1-9.1-207 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 207. (a) Except as
 37 otherwise provided in subsection (d), a secured party shall use
 38 reasonable care in the custody and preservation of collateral in the
 39 secured party's possession. In the case of chattel paper or an
 40 instrument, reasonable care includes taking necessary steps to preserve
 41 rights against prior parties unless otherwise agreed.

42 (b) Except as otherwise provided in subsection (d), if a secured

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party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

SECTION 68. IC 26-1-9.1-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 208. (a) This section applies to cases in which there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under IC 26-1-9.1-104(a)(2) shall send to the bank with which the

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1 deposit account is maintained an authenticated statement that
 2 releases the bank from any further obligation to comply with
 3 instructions originated by the secured party;

4 (2) a secured party having control of a deposit account under
 5 IC 26-1-9.1-104(a)(3) shall:

6 (A) pay the debtor the balance on deposit in the deposit
 7 account; or

8 (B) transfer the balance on deposit into a deposit account in
 9 the debtor's name;

10 (3) a secured party, other than a buyer, having control of
 11 electronic chattel paper under IC 26-1-9.1-105 shall:

12 (A) communicate the authoritative copy of the electronic
 13 chattel paper to the debtor or its designated custodian;

14 (B) if the debtor designates a custodian that is the designated
 15 custodian with which the authoritative copy of the electronic
 16 chattel paper is maintained for the secured party, communicate
 17 to the custodian an authenticated record releasing the
 18 designated custodian from any further obligation to comply
 19 with instructions originated by the secured party and
 20 instructing the custodian to comply with instructions
 21 originated by the debtor; and

22 (C) take appropriate action to enable the debtor or its
 23 designated custodian to make copies of or revisions to the
 24 authoritative copy that add or change an identified assignee of
 25 the authoritative copy without the consent of the secured party;

26 (4) a secured party having control of investment property under
 27 IC 26-1-8.1-106(d)(2) or IC 26-1-9.1-106(b) shall send to the
 28 securities intermediary or commodity intermediary with which the
 29 security entitlement or commodity contract is maintained an
 30 authenticated record that releases the securities intermediary or
 31 commodity intermediary from any further obligation to comply
 32 with entitlement orders or directions originated by the secured
 33 party; ~~and~~

34 (5) a secured party having control of a letter-of-credit right under
 35 IC 26-1-9.1-107 shall send to each person having an unfulfilled
 36 obligation to pay or deliver proceeds of the letter of credit to the
 37 secured party an authenticated release from any further obligation
 38 to pay or deliver proceeds of the letter of credit to the secured
 39 party; **and**

40 **(6) a secured party having control of an electronic document**
 41 **shall:**

42 (A) give control of the electronic document to the debtor or

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its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 69. IC 26-1-9.1-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 301. Except as otherwise provided in IC 26-1-9.1-303 through IC 26-1-9.1-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while **tangible** negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SECTION 70. IC 26-1-9.1-310 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. (a) Except as
 2 otherwise provided in subsection (b) and IC 26-1-9.1-312(b), a
 3 financing statement must be filed to perfect all security interests and
 4 agricultural liens.

5 (b) The filing of a financing statement is not necessary to perfect a
 6 security interest:

7 (1) that is perfected under IC 26-1-9.1-308(d),
 8 IC 26-1-9.1-308(e), IC 26-1-9.1-308(f), or IC 26-1-9.1-308(g);

9 (2) that is perfected under IC 26-1-9.1-309 when it attaches;

10 (3) in property subject to a statute, regulation, or treaty described
 11 in IC 26-1-9.1-311(a);

12 (4) in goods in possession of a bailee that are perfected under
 13 IC 26-1-9.1-312(d)(1) or IC 26-1-9.1-312(d)(2);

14 (5) in certificated securities, documents, goods, or instruments
 15 which is perfected without filing, **control**, or possession under
 16 IC 26-1-9.1-312(e), IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g);

17 (6) in collateral in the secured party's possession under
 18 IC 26-1-9.1-313;

19 (7) in a certificated security which is perfected by delivery of the
 20 security certificate to the secured party under IC 26-1-9.1-313;

21 (8) in deposit accounts, electronic chattel paper, **electronic**
 22 **documents**, investment property, or letter-of-credit rights which
 23 is perfected by control under IC 26-1-9.1-314;

24 (9) in proceeds which is perfected under IC 26-1-9.1-315; or

25 (10) that is perfected under IC 26-1-9.1-316.

26 (c) If a secured party assigns a perfected security interest or
 27 agricultural lien, a filing under IC 26-1-9.1 is not required to continue
 28 the perfected status of the security interest against creditors of and
 29 transferees from the original debtor.

30 SECTION 71. IC 26-1-9.1-312 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 312. (a) A security
 32 interest in chattel paper, negotiable documents, instruments, or
 33 investment property may be perfected by filing.

34 (b) Except as otherwise provided in IC 26-1-9.1-315(c) and
 35 IC 26-1-9.1-315(d), for proceeds:

36 (1) a security interest in a deposit account may be perfected only
 37 by control under IC 26-1-9.1-314;

38 (2) and except as otherwise provided in IC 26-1-9.1-308(d), a
 39 security interest in a letter-of-credit right may be perfected only
 40 by control under IC 26-1-9.1-314; and

41 (3) a security interest in money may be perfected only by the
 42 secured party's taking possession under IC 26-1-9.1-313.

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(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

- (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession **or control** for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with IC 26-1-9.1.

SECTION 72. IC 26-1-9.1-313 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 313. (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in **tangible** negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral.

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1 A secured party may perfect a security interest in certificated securities
2 by taking delivery of the certificated securities under IC 26-1-8.1-301.

3 (b) With respect to goods covered by a certificate of title issued by
4 this state, a secured party may perfect a security interest in the goods
5 by taking possession of the goods only in the circumstances described
6 in IC 26-1-9.1-316(e).

7 (c) With respect to collateral other than certificated securities and
8 goods covered by a document, a secured party takes possession of
9 collateral in the possession of a person other than the debtor, the
10 secured party, or a lessee of the collateral from the debtor in the
11 ordinary course of the debtor's business, when:

12 (1) the person in possession authenticates a record acknowledging
13 that it holds possession of the collateral for the secured party's
14 benefit; or

15 (2) the person takes possession of the collateral after having
16 authenticated a record acknowledging that it will hold possession
17 of collateral for the secured party's benefit.

18 (d) If perfection of a security interest depends upon possession of
19 the collateral by a secured party, perfection occurs not earlier than the
20 time the secured party takes possession and continues only while the
21 secured party retains possession.

22 (e) A security interest in a certificated security in registered form is
23 perfected by delivery when delivery of the certificated security occurs
24 under IC 26-1-8.1-301 and remains perfected by delivery until the
25 debtor obtains possession of the security certificate.

26 (f) A person in possession of collateral is not required to
27 acknowledge that it holds possession for a secured party's benefit.

28 (g) If a person acknowledges that it holds possession for the secured
29 party's benefit:

30 (1) the acknowledgment is effective under subsection (c) or
31 IC 26-1-8.1-301(a), even if the acknowledgment violates the
32 rights of a debtor; and

33 (2) unless the person otherwise agrees or a law other than
34 IC 26-1-9.1 otherwise provides, the person does not owe any duty
35 to the secured party and is not required to confirm the
36 acknowledgment to another person.

37 (h) A secured party having possession of collateral does not
38 relinquish possession by delivering the collateral to a person other than
39 the debtor or a lessee of the collateral from the debtor in the ordinary
40 course of the debtor's business if the person was instructed before the
41 delivery or is instructed contemporaneously with the delivery:

42 (1) to hold possession of the collateral for the secured party's

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benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than IC 26-1-9.1 otherwise provides.

SECTION 73. IC 26-1-9.1-314 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 314. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, **or electronic documents** may be perfected by control of the collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, **or electronic documents** is perfected by control under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, or IC 26-1-9.1-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under IC 26-1-9.1-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SECTION 74. IC 26-1-9.1-317 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 317. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under IC 26-1-9.1-322; and

(2) except as provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in IC 26-1-9.1-203(b)(3) is met;

and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, **tangible** documents,

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goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, **electronic documents**, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in IC 26-1-9.1-320 and IC 26-1-9.1-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

SECTION 75. IC 26-1-9.1-338 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 338. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in IC 26-1-9.1-516(b)(5) that is incorrect at the time the financing statement is filed:

- (1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of **tangible** chattel paper, **tangible** documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SECTION 76. IC 26-1-9.1-601 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 601. (a) After default, a secured party has the rights provided in this section through IC 26-1-9.1-628 and, except as otherwise provided in IC 26-1-9.1-602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise

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enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107 has the rights and duties provided in IC 26-1-9.1-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and IC 26-1-9.1-605, after default, a debtor and an obligor have the rights provided in IC 26-1-9.1-601 through IC 26-1-9.1-628 and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of IC 26-1-9.1.

(g) Except as otherwise provided in IC 26-1-9.1-607(c), IC 26-1-9.1-601 through IC 26-1-9.1-628 impose no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

SECTION 77. IC 32-31-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. If a tenant does not claim the tenant's property within ninety (90) days after receiving notice under section 3 of this chapter, a warehouseman may sell the property received under this chapter under ~~IC 26-1-7-210(2)~~. **IC 26-1-7-210(b).**

SECTION 78. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2007]: IC 26-1-1-105; IC 26-1-2-208; IC 26-1-2.1-207.

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SENATE MOTION

Madam President: I move that Senator Paul be added as second author of Senate Bill 419.

SIMPSON

 COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 419, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, delete lines 33 through 42 and insert:

"SECTION 5. IC 26-1-1-301 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 301. (1) Except as otherwise provided in this section, if a transaction bears a reasonable relation to Indiana and also to another state or nation, the parties may agree that the law either of Indiana or of the other state or nation shall govern their rights and duties.**

(2) In the absence of an agreement under subsection (1), and except as provided in subsection (3), IC 26-1 applies to transactions bearing an appropriate relation to Indiana.

(3) If any of the following provisions specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law so specified:

- (a) IC 26-1-2-402.**
- (b) IC 26-1-2.1-105 and IC 26-1-2.1-106.**
- (c) IC 26-1-4-102.**
- (d) IC 26-1-4.1-507.**
- (e) IC 26-1-5.1-116.**
- (f) IC 26-1-6.1-103.**
- (g) IC 26-1-8.1-110.**
- (h) IC 26-1-9.1-301 through IC 26-1-9.1-307."**

Delete page 10.

Page 11, delete lines 1 through 8.

Page 11, delete lines 18 through 42.

Page 12, delete lines 1 through 22.

Page 37, line 4, before "IC 26-1-2-208;" insert "IC 26-1-1-105;".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to SB 419 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 11, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 419 be amended to read as follows:

Page 1, delete lines 15 through 17, begin a new paragraph and insert:

"SECTION 3. IC 26-1-1-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 201. Subject to additional definitions contained in IC 26-1-2 through IC 26-1-10 which are applicable to specific provisions, and unless the context otherwise requires, in IC 26-1:

- (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.
- (2) "Aggrieved party" means a party entitled to resort to a remedy.
- (3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in IC 26-1-1-205. ~~and IC 26-1-2-208.~~ Whether an agreement has legal consequences is determined by the provisions of IC 26-1, if applicable; otherwise by the law of contracts (IC 26-1-1-103). (Compare "Contract".)
- (4) "Bank" means any person engaged in the business of banking.
- (5) "Bearer" means the person:
 - (A) **in control of a negotiable electronic document of title;**
 - or**
 - (B) **in possession of an a negotiable instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.**
- (6) "Bill of lading" means a document **of title** evidencing the receipt of goods for shipment issued by a person engaged in the business of **directly or indirectly** transporting or forwarding goods. ~~and The term does not include a warehouse receipt. The~~

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term includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may require goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from that seller under IC 26-1-2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous". A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous. Whether a term or clause is conspicuous or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a

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receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" means the following:

(A) **With respect to an electronic document of title, voluntary transfer of control.**

(B) With respect to instruments, **tangible** documents of title, chattel paper, or certificated securities, ~~means~~ voluntary transfer of possession.

(15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods and also any other document, which means a record that:~~

(A) in the regular course of business or financing, is treated as adequately evidencing that the person in possession **or control** of ~~it~~ **the record** is entitled to receive, **control**, hold, and dispose of the ~~document~~ **record** and the goods it covers; ~~To be a document of title, a document must purport and~~

(B) **purports** to be issued by or addressed to a bailee and ~~purport~~ **purports** to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, or order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of IC 26-1 to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" ~~with respect to~~ **means:**

(A) **the person in possession of** a negotiable instrument

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means the person in possession if the instrument ~~that~~ is payable **either** to bearer or ~~in the case of an instrument;~~ ~~payable~~ to an identified person if the identified person is in possession **of the instrument; "Holder" with respect to**

(B) the person in possession of a negotiable tangible document of title means the person in possession if the goods are deliverable **either** to bearer or to the order of the person in possession; **or**

(C) the person in control of a negotiable electronic document of title.

(21) To "honor" is to pay or to accept and pay or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay ~~his the~~ **person's** debts in the ordinary course of business or cannot pay ~~his the person's~~ debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

(25) A person has "notice" of a fact when:

- (a) ~~he the person~~ has actual knowledge of it;
- (b) ~~he the person~~ has received a notice or notification of it; or
- (c) from all the facts and circumstances known to ~~him the person~~ **person** at the time in question, ~~he the person~~ has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when ~~he the person~~ **person** has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by IC 26-1.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

- (a) it comes to ~~his the person's~~ attention; or

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(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by ~~him~~ **the person** as the place for receipt of such communications.

(27) Notice, knowledge, or a notice of notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction and, in any event, from the time when it would have been brought to ~~his~~ **the person's** attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of ~~his~~ **the person's** regular duties or unless ~~he~~ **the person** has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(33a) "Registered mail" includes certified mail.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

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(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to IC 26-1-9.1. The special property interest of a buyer of goods on identification of such goods to a contract for sale under IC 26-1-2-401 is not a security interest, but a buyer may also acquire a security interest by complying with IC 26-1-9.1. Except as otherwise provided in IC 26-1-2-505, the right of a seller or lessor of goods under IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with IC 26-1-9.1. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (IC 26-1-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
- (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or

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- service or maintenance costs with respect to the goods;
- (c) the lessee has an option to renew the lease or to become the owner of the goods;
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

- (x) Additional consideration is not nominal if:
 - (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
 - (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

- (y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

- (z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

- (38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the

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circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (IC 26-1-3.1-303, IC 26-1-4-208, and IC 26-1-4-209) a person gives value for rights if ~~he~~ **the person** acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a preexisting claim;

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a ~~receipt~~ **document of title** issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Delete pages 2 through 7.

Page 8, delete lines 1 through 30.

Page 10, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 8. IC 26-1-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) In IC 26-1-2, unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and observance of reasonable commercial standards of fair dealing in the trade.

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(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to IC 26-1-2, or to specified parts thereof, and the sections in which they appear are:

"Acceptance". IC 26-1-2-606.

"Banker's credit". IC 26-1-2-325.

"Between merchants". IC 26-1-2-104.

"Cancellation". IC 26-1-2-106(4).

"Commercial unit". IC 26-1-2-105.

"Confirmed credit". IC 26-1-2-325.

"Conforming to contract". IC 26-1-2-106.

"Contract for sale". IC 26-1-2-106.

"Cover". IC 26-1-2-712.

"Entrusting". IC 26-1-2-403.

"Financing agency". IC 26-1-2-104.

"Future goods". IC 26-1-2-105.

"Goods". IC 26-1-2-105.

"Identification". IC 26-1-2-501.

"Installment contract". IC 26-1-2-612.

"Letter of credit". IC 26-1-2-325.

"Lot". IC 26-1-2-105.

"Merchant". IC 26-1-2-104.

"Overseas". IC 26-1-2-323.

"Person in the position of seller". IC 26-1-2-707.

"Present sale". IC 26-1-2-106.

"Sale". IC 26-1-2-106.

"Sale on approval". IC 26-1-2-326.

"Sale or return". IC 26-1-2-326.

"Termination". IC 26-1-2-106.

(3) **"Control" as provided in IC 26-1-7-106** and the following definitions apply to IC 26-1-2:

"Check". IC 26-1-3.1-104.

"Consignee". IC 26-1-7-102.

"Consignor". IC 26-1-7-102.

"Consumer goods". IC 26-1-9.1-102.

"Dishonor". IC 26-1-3.1-502.

"Draft". IC 26-1-3.1-104.

(4) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-2.

SECTION 9. IC 26-1-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (1) "Merchant" means a person who deals in goods of the kind or otherwise by his

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occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany **or are associated with** the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (IC 26-1-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."

Page 10, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 11. IC 26-1-2-310 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods, even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods, he may ship them under reservation and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due, unless such inspection is inconsistent with the terms of the contract (IC 26-1-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subdivision (b), then payment is due, **regardless of where the goods are to be received:**

(i) at the time and place at which the buyer is to receive **delivery of the tangible** documents; ~~regardless of where the goods are to be received or~~

(ii) **at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence;** and

(d) where the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment, but postdating the invoice or delaying its dispatch will

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correspondingly delay the starting of the credit period.

SECTION 12. IC 26-1-2-323 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 323. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller, unless otherwise agreed, must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a **tangible** bill of lading has been issued in a set of parts, unless otherwise agreed, if the documents are not to be sent from abroad, the buyer may demand tender of the full set. Otherwise, only one (1) part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

- (a) due tender of a single part is acceptable within the provisions of IC 26-1-2-508(1) on cure of improper delivery; and
- (b) even though the full set is demanded, if the documents are sent from abroad, the person tendering an incomplete set may nevertheless require payments upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

SECTION 13. IC 26-1-2-401 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 401. Each provision of IC 26-1-2 with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods, except where the provision refers to such title. Insofar as situations are not covered by the other provisions of IC 26-1-2 and matters concerning title become material, the following rules apply:

- (1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (IC 26-1-2-501), and unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by IC 26-1. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of IC 26-1-9.1 on secured transactions, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (2) Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance

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with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place, and in particular despite any reservation of a security interest by the bill of lading:

- (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
- (b) if the contract requires delivery at destination, title passes on tender there.
- (3) Unless otherwise explicitly agreed, where delivery is to be made without moving the goods:
 - (a) if the seller is to deliver a **tangible** document of title, title passes at the time when and the place where he delivers such documents **and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document**; or
 - (b) if the goods are at the time of contracting already identified and no documents **of title** are to be delivered, title passes at the time and place of contracting.
- (4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

SECTION 14. IC 26-1-2-503 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 503. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and IC 26-1-2, and in particular:

- (a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
- (b) unless otherwise agreed, the buyer must furnish facilities reasonably suited to the receipt of the goods.
- (2) Where the case is within IC 26-1-2-504 respecting shipment, tender requires that the seller comply with its provisions.
- (3) Where the seller is required to deliver at a particular destination, tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and

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(5).

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgement by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record directing~~ the bailee to deliver is sufficient tender unless the buyer seasonably objects, and **except as otherwise provided in IC 26-1-9.1**, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in IC 26-1-2-323(2) with respect to bills of lading in a set; and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

SECTION 15. IC 26-1-2-505 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 505. (1) Where the seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (IC 26-1-2-507(2)), a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession **or control** of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within IC 26-1-2-504, but impairs neither

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the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document **of title**.

SECTION 16. IC 26-1-2-506 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular. ~~on its face.~~

SECTION 17. IC 26-1-2-509 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (IC 26-1-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of **possession or control of** a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of **possession or control of** a nonnegotiable document of title or other ~~written~~ direction to deliver **in a record**, as provided in IC 26-1-2-503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant. Otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of IC 26-1-2-327 on sale on approval and IC 26-1-2-510 on effect of breach on risk of loss.

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SECTION 18. IC 26-1-2-605 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 605. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

- (a) where the seller could have cured it if stated seasonably; or
- (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ **in** the documents.

SECTION 19. IC 26-1-2-705 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 705. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (IC 26-1-2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman a warehouse;~~
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery, the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification, the bailee must hold and deliver the goods according to the directions of the seller, but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods, the bailee is not obliged to obey a notification to stop until surrender **of possession or control** of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 20. IC 26-1-2.1-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (1) Unless the context otherwise requires, in IC 26-1-2.1:

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(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ **acquiring** goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars (\$25,000).

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

- (i) the lessor does not select, manufacture, or supply the goods;
- (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
- (iii) one (1) of the following occurs:

- (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
- (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

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(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; (b) that the lessee is entitled under IC 26-1-2.1 to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (IC 26-1-2.1-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their

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language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in IC 26-1-2.1. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by IC 26-1-2.1 and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ **acquiring** goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the

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time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to IC 26-1-2.1 and the sections in which they appear are:

"Accessions". IC 26-1-2.1-310(1).

"Construction mortgage". IC 26-1-2.1-309(1)(d).

"Encumbrance". IC 26-1-2.1-309(1)(e).

"Fixtures". IC 26-1-2.1-309(1)(a).

"Fixture filing". IC 26-1-2.1-309(1)(b).

"Purchase money lease". IC 26-1-2.1-309(1)(c).

(3) The following definitions in other chapters apply to IC 26-1-2.1:

"Account". IC 26-1-9.1-102(a)(2).

"Between merchants". IC 26-1-2-104(3).

"Buyer". IC 26-1-2-103(1)(a).

"Chattel paper". IC 26-1-9.1-102(a)(11).

"Consumer goods". IC 26-1-9.1-102(a)(23).

"Document". IC 26-1-9.1-102(a)(30).

"Entrusting". IC 26-1-2-403(3).

"General intangibles". IC 26-1-9.1-102(a)(42).

"Good faith". IC 26-1-2-103(1)(b).

"Instrument". IC 26-1-9.1-102(a)(47).

"Merchant". IC 26-1-2-104(1).

"Mortgage". IC 26-1-9.1-102(a)(55).

"Pursuant to commitment". IC 26-1-9.1-102(a)(68).

"Receipt". IC 26-1-2-103(1)(c).

"Sale". IC 26-1-2-106(1).

"Sale on approval". IC 26-1-2-326.

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"Sale or return". IC 26-1-2-326.

"Seller". IC 26-1-2-103(1)(d).

(4) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-2.1.

SECTION 21. IC 26-1-2.1-514 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 514. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (IC 26-1-2.1-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

SECTION 22. IC 26-1-2.1-526 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 526. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 23. IC 26-1-4-104 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 104. (a) In IC 26-1-4, unless the context otherwise requires:

- (1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.
 - (2) "Afternoon" means the period of a day between noon and midnight.
 - (3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, but does not include Saturday, Sunday, or a legal holiday.
 - (4) "Clearing house" means an association of banks or other payors regularly clearing items.
 - (5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.
 - (6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (IC 26-1-8.1-102), or instructions for uncertificated securities (IC 26-1-8.1-102) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.
 - (7) "Draft" means a draft (as defined in IC 26-1-3.1-104) or an item, other than an instrument, that is an order.
 - (8) "Drawee" means a person ordered in a draft to make payment.
 - (9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by IC 26-1-4.1 or a credit or debit card slip.
 - (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.
 - (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit, or by remittance, or otherwise as instructed. A settlement may be either provisional or final.
 - (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.
- (b) Other definitions applying to IC 26-1-4 and the sections in which

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they appear are:

"Agreement for electronic presentment". IC 26-1-4-110.

"Bank". IC 26-1-4-105.

"Collecting bank". IC 26-1-4-105.

"Depository bank". IC 26-1-4-105.

"Intermediary bank". IC 26-1-4-105.

"Payor bank". IC 26-1-4-105.

"Presenting bank". IC 26-1-4-105.

"Presentment notice". IC 26-1-4-110.

(c) **"Control" as provided in IC 26-1-7-106** and the following definitions in IC 26-1-3.1 apply to IC 26-1-4:

"Acceptance". IC 26-1-3.1-409.

"Alteration". IC 26-1-3.1-407.

"Cashier's check". IC 26-1-3.1-104.

"Certificate of deposit". IC 26-1-3.1-104.

"Certified check". IC 26-1-3.1-409.

"Check". IC 26-1-3.1-104.

"Holder in due course". IC 26-1-3.1-302.

"Instrument". IC 26-1-3.1-104.

"Notice of dishonor". IC 26-1-3.1-503.

"Order". IC 26-1-3.1-103.

"Ordinary care". IC 26-1-3.1-103.

"Person entitled to enforce". IC 26-1-3.1-301.

"Presentment". IC 26-1-3.1-501.

"Promise". IC 26-1-3.1-103.

"Prove". IC 26-1-3.1-103.

"Teller's check". IC 26-1-3.1-104.

"Unauthorized signature". IC 26-1-3.1-403.

(d) In addition, IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-4.

SECTION 24. IC 26-1-4-210 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 210. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

- (1) in the case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
- (2) in the case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
- (3) if it makes an advance on or against the item.

(b) If credit given for several items received at one (1) time or under

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a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or **possession or control of the** accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to IC 26-1-9.1, but:

- (1) no security agreement is necessary to make the security interest enforceable (IC 26-1-9.1-203(b)(3)(A));
- (2) no filing is required to perfect the security interest; and
- (3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds."

Page 29, line 23, strike "and".

Page 29, line 23, after "though" insert "**or**".

Page 30, line 2, after "endorsement" delete ".".

Page 30, line 2, after "as well as" insert "**and**".

Page 30, line 2, reset in roman "delivery".

Page 34, after line 42, begin a new paragraph and insert:

"SECTION 65. IC 26-1-8.1-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 103. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face amount certificate issued by a face amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by IC 26-1-8.1, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by IC 26-1-8.1

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and not by IC 26-1-3.1, even though it also meets the requirements of that article. However, a negotiable instrument governed by IC 26-1-3.1 is a financial asset if it is held in a securities account.

(e) An option or a similar obligation issued by a clearing corporation to its participants is not a security, but it is a financial asset.

(f) A commodity contract (as defined in IC 26-1-9.1-102(a)(15)) is not a security or a financial asset.

(g) A document of title is not a financial asset unless section 102(a)(9)(iii) of this chapter applies.

SECTION 66. IC 26-1-9.1-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 102. (a) In IC 26-1-9.1:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of

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a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) that secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with the debtor's farming operation;

(B) that is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with the debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the

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security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include: (i) charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) traded on a foreign commodity board of trade, exchange,

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or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for

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use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in ~~IC 26-1-7-201(2)~~ **IC 26-1-7-201(b)**.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

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(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to IC 26-1-9.1-519(a).

(37) "Filing office" means an office designated in IC 26-1-9.1-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to IC 26-1-9.1-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying IC 26-1-9.1-502(a) and IC 26-1-9.1-502(b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security

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interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, that:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or

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(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

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(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under IC 26-1-9.1-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in IC 26-1-9.1-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under IC 26-1-9.1-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

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(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in clause (A);

(D) the spouse of an individual described in clause (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in clause (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in IC 26-1-9.1-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to IC 26-1-9.1-620, IC 26-1-9.1-621, and IC 26-1-9.1-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor, or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

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(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under IC 26-1-2-401, IC 26-1-2-505, IC 26-1-2-711(3), IC 26-1-2.1-508(5), IC 26-1-4-210, or IC 26-1-5.1-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under clause (A).

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(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **"Control" as provided in IC 26-1-7-106 and** the following definitions outside IC 26-1-9.1 apply to IC 26-1-9.1:

"Applicant" IC 26-1-5.1-102.

"Beneficiary" IC 26-1-5.1-102.

"Broker" IC 26-1-8.1-102.

"Certificated security" IC 26-1-8.1-102.

"Check" IC 26-1-3.1-104.

"Clearing corporation" IC 26-1-8.1-102.

"Contract for sale" IC 26-1-2-106.

"Customer" IC 26-1-4-104.

"Entitlement holder" IC 26-1-8.1-102.

"Financial asset" IC 26-1-8.1-102.

"Holder in due course" IC 26-1-3.1-302.

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"Issuer" (with respect to a letter of credit or letter-of-credit right)
IC 26-1-5.1-102.

"Issuer" (with respect to a security) IC 26-1-8.1-201.

"Issuer" (with respect to documents of title) IC 26-1-7-102.

"Lease" IC 26-1-2.1-103.

"Lease agreement" IC 26-1-2.1-103.

"Lease contract" IC 26-1-2.1-103.

"Leasehold interest" IC 26-1-2.1-103.

"Lessee" IC 26-1-2.1-103.

"Lessee in ordinary course of business" IC 26-1-2.1-103.

"Lessor" IC 26-1-2.1-103.

"Lessor's residual interest" IC 26-1-2.1-103.

"Letter of credit" IC 26-1-5.1-102.

"Merchant" IC 26-1-2-104.

"Negotiable instrument" IC 26-1-3.1-104.

"Nominated person" IC 26-1-5.1-102.

"Note" IC 26-1-3.1-104.

"Proceeds of a letter of credit" IC 26-1-5.1-114.

"Prove" IC 26-1-3.1-103.

"Sale" IC 26-1-2-106.

"Securities account" IC 26-1-8.1-501.

"Securities intermediary" IC 26-1-8.1-102.

"Security" IC 26-1-8.1-102.

"Security certificate" IC 26-1-8.1-102.

"Security entitlement" IC 26-1-8.1-102.

"Uncertificated security" IC 26-1-8.1-102.

(c) IC 26-1-1 contains general definitions and principles of construction and interpretation applicable throughout IC 26-1-9.1.

SECTION 67. IC 26-1-9.1-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 203. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one (1) of the following conditions is met:
 - (A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security

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interest covers timber to be cut, a description of the land concerned.

(B) The collateral is not a certificated security and is in the possession of the secured party under IC 26-1-9.1-313 pursuant to the debtor's security agreement.

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under IC 26-1-8.1-301 pursuant to the debtor's security agreement.

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, **or electronic documents**, and the secured party has control under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to IC 26-1-4-210 on the security interest of a collecting bank, IC 26-1-5.1-118 on the security interest of a letter-of-credit issuer or nominated person, IC 26-1-9.1-110 on a security interest arising under IC 26-1-2 or IC 26-1-2.1, and IC 26-1-9.1-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than IC 26-1-9.1 or by contract:

- (1) the security agreement becomes effective to create a security interest in the person's property; or
- (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by IC 26-1-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or

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real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SECTION 68. IC 26-1-9.1-207 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 207. (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

- (1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
- (3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (4) the secured party may use or operate the collateral:
 - (A) for the purpose of preserving the collateral or its value;
 - (B) as permitted by an order of a court having competent jurisdiction; or
 - (C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107:

- (1) may hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

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(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

- (A) to charge back uncollected collateral; or
- (B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

SECTION 69. IC 26-1-9.1-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 208. (a) This section applies to cases in which there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under IC 26-1-9.1-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under IC 26-1-9.1-104(a)(3) shall:

- (A) pay the debtor the balance on deposit in the deposit account; or
- (B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under IC 26-1-9.1-105 shall:

- (A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
- (B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
- (C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under

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IC 26-1-8.1-106(d)(2) or IC 26-1-9.1-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under IC 26-1-9.1-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 70. IC 26-1-9.1-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 301. Except as otherwise provided in IC 26-1-9.1-303 through IC 26-1-9.1-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or

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nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while **tangible** negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SECTION 71. IC 26-1-9.1-310 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 310. (a) Except as otherwise provided in subsection (b) and IC 26-1-9.1-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under IC 26-1-9.1-308(d), IC 26-1-9.1-308(e), IC 26-1-9.1-308(f), or IC 26-1-9.1-308(g);

(2) that is perfected under IC 26-1-9.1-309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in IC 26-1-9.1-311(a);

(4) in goods in possession of a bailee that are perfected under IC 26-1-9.1-312(d)(1) or IC 26-1-9.1-312(d)(2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, **control**, or possession under IC 26-1-9.1-312(e), IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g);

(6) in collateral in the secured party's possession under IC 26-1-9.1-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under IC 26-1-9.1-313;

(8) in deposit accounts, electronic chattel paper, **electronic documents**, investment property, or letter-of-credit rights which is perfected by control under IC 26-1-9.1-314;

(9) in proceeds which is perfected under IC 26-1-9.1-315; or

(10) that is perfected under IC 26-1-9.1-316.

(c) If a secured party assigns a perfected security interest or

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agricultural lien, a filing under IC 26-1-9.1 is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

SECTION 72. IC 26-1-9.1-312 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 312. (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in IC 26-1-9.1-315(c) and IC 26-1-9.1-315(d), for proceeds:

- (1) a security interest in a deposit account may be perfected only by control under IC 26-1-9.1-314;
- (2) and except as otherwise provided in IC 26-1-9.1-308(d), a security interest in a letter-of-credit right may be perfected only by control under IC 26-1-9.1-314; and
- (3) a security interest in money may be perfected only by the secured party's taking possession under IC 26-1-9.1-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

- (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession **or control** for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping,

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manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with IC 26-1-9.1.

SECTION 73. IC 26-1-9.1-313 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 313. (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in **tangible** negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under IC 26-1-8.1-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in IC 26-1-9.1-316(e).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

- (1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs not earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under IC 26-1-8.1-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to

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acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

- (1) the acknowledgment is effective under subsection (c) or IC 26-1-8.1-301(a), even if the acknowledgment violates the rights of a debtor; and
- (2) unless the person otherwise agrees or a law other than IC 26-1-9.1 otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- (1) to hold possession of the collateral for the secured party's benefit; or
- (2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than IC 26-1-9.1 otherwise provides.

SECTION 74. IC 26-1-9.1-314 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 314. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, **or electronic documents** may be perfected by control of the collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, **or electronic documents** is perfected by control under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, or IC 26-1-9.1-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under IC 26-1-9.1-106 from the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:
 - (A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

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- (B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
- (C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SECTION 75. IC 26-1-9.1-317 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 317. (a) A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under IC 26-1-9.1-322; and
- (2) except as provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one (1) of the conditions specified in IC 26-1-9.1-203(b)(3) is met;

and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, **tangible** documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, **electronic documents**, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in IC 26-1-9.1-320 and IC 26-1-9.1-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

SECTION 76. IC 26-1-9.1-338 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 338. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in IC 26-1-9.1-516(b)(5) that is incorrect at the time the financing statement is filed:

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- (1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of **tangible** chattel paper, **tangible** documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SECTION 77. IC 26-1-9.1-601 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 601. (a) After default, a secured party has the rights provided in this section through IC 26-1-9.1-628 and, except as otherwise provided in IC 26-1-9.1-602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under **IC 26-1-7-106**, IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107 has the rights and duties provided in IC 26-1-9.1-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and IC 26-1-9.1-605, after default, a debtor and an obligor have the rights provided in IC 26-1-9.1-601 through IC 26-1-9.1-628 and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral;
- or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter

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hold the collateral free of any other requirements of IC 26-1-9.1.

(g) Except as otherwise provided in IC 26-1-9.1-607(c), IC 26-1-9.1-601 through IC 26-1-9.1-628 impose no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

SECTION 78. IC 32-31-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. If a tenant does not claim the tenant's property within ninety (90) days after receiving notice under section 3 of this chapter, a warehouseman may sell the property received under this chapter under ~~IC 26-1-7-210(2)~~. **IC 26-1-7-210(b).**"

Renumber all SECTIONS consecutively.

(Reference is to SB 419 as printed February 7, 2007.)

TALLIAN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 419, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 9, nays 0.

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